

Doct. & Student

THE
DIALOGUE
in English, betweene
a Doctor of Divinitie,
and a Student in the
Lawes of Eng-
land.

Martini Hugonis Hamill

Christopher
Saint-Germain
Newly corrected and
Imprinted, with new
Additions.

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The first Dialogue in English,
betwixt a Doctor of Diuinitie, and
a Student in the Lawes of England, of
the grounds of the said Lawes, and of
conscience, newly corrected and est-
loones Imprinted with new
Additions.

¶ The Introduction.



Doctor of Diuinitie that was
of great acquaintance and
familiaritie with a Student
in the lawes of England,
said thus vnto him : I haue
had great desire of long time
to know wherupon the Law
of England is grounded, but because the most
part of the Law of England is written in the
French Tongue, therefore I cannot through
mine owne studie attaine to the knowledge
hereof: for in that Tongue I am nothing ex-
pert. And because I haue found thee a faithfull
friend to me, in all my businesse, therefore I am
bold to come to thee before any other to know
by mind, what be the verie grounds of the law
of England as thou thinkest.

St. That would aske a great leasure, & it is al-
laboue my cunning to do it. Neuertheles, that
thou shalt not thinke that I would wilfully re-
fuse to fulfill thy desire, I shal with good wil doe
that

The first Chapter.

that in me is to satisfie thy mind: But I pray thee that thou wilt first shew mee somewhat of other Lawes that pertaine most to this matter, & that Doctors treat of, how Lawes haue begun. And then I will gladly shew thee as me thinketh what be the grounds of the Law of England D^o B. I will with good will doe as thou saiest: Wherefore thou shalt vnderstand, that Doctors treat of foure Lawes, the which (as me seemeth) pertaine most to this matter. The first is the Lawe Eternall The second is the Law of Nature of reasonable creatures, the which as I haue heard say, is called by them that be learned in the law of England, the Law of reason. The third is the law of God The fourth is the Law of Man. And therefore I will first treat of the Law Eternall.

¶ Of the Law Eternall.

Cap. 1.

LIke as there is in every artificer a reason of such like things as are to be made by his craft: so likewise it becometh that in every governour there be reason and a foresight in the governing of such things as shall be ordered & done by him, to them that hee hath the governance of. And forasmuch as almightie God is the creator and maker of all creatures, to the which he is compared as a workeman to his workes: and is also the governor of all breeds and moovings that be found in any creature: Therefore as the reason of the wisepome of G^o D (in as much as creatures be created by him) is the reason & foresight

light of all crafts and works that haue been or
shall be, so the reason of the wisdom of God
moving all things by wisdom made to a good
end, obtaineth the name & reason of a law, and
that is called the Law eternall.

And this law eternall is called the first law;
& it is well called the first, for it was before all
other laws, and all other laws bee deriued of
it: whereupon Saint Augustine saith in his 1.
Booke of Free arbitrement, that in Temporall
Laws, nothing is righteous ne lawfull, but that
the people haue deriued to them out of the law
eternall. Wherefore every man hath right & title
to haue & he hath righteously, of the right wise
iudgement of the first reason, which is the law
eternall St. But how may this law eternall bee
knowne? for as the Apostle writteth in the 5.
Chapter of his first Epistle to the Corinthians,
Quæ sunt Dei nemo scit, nisi spiritus Dei. That
is to say, No man knoweth what is in God, but
the spirit of God: wherefore it seemeth that he
openeth his mouth against heauen, that attēp-
teth to know it. Doct. This Law eternall no
man may know as it is in it selfe, but onely
blessed soules that see God face to face. But al-
mightie God of his goodnesse sheweth of it as
much to his creatures as is necessarie for the,
for els god should bind his creatures to a thing
impossible: which may in no wise bee thought
in him. Therefore to be understood, that 3.
manner of waies almightie God maketh his law
eternall knowne to his creatures reasonable.
First, by the light of naturall reason. Secondly,
by heauenly reuelatiō. Thirdly, by the order of a

The 2. Chapter.

¶ Since of any other secundarie gouernour that hath power to bind his subiects to a law.

And when the law eternall of the will of God is knowne to his creatures reasonable by the light of naturall vnderstanding, or by the light of naturall reason, that is called the law of reason: and when it is shewed by heavenly reuelation in such manner as hereafter shall appeare, then it is called the Law of God. And when it is shewed vnto him by the order of a Prince, or of any other secundarie gouernour, that hath a power to set a Law vpon his subiects, then it is called the Law of man, though originally it be made of God. For lawes made by man that hath receiued therto power of God, be made by God. Therefore the said three lawes that is to say, the law of reason the law of God and the law of man, the which haue seuerall names after the manner as they bee shewed to man, be called in God, one law eternall.

And this is the law of which it is written, Prouerborum octauo, where it is said, Per me reges regnant, & legum conditores, iusta discernunt. That is to say, by me kings raigne, and makers of lawes Discerne the troth: and this sufficeth for this time of the law eternall.

¶ Of the law of reason, the which by doctors is called the law of nature of reasonable creatures,

Cap. 2.

¶ First it is to bee vnderstood, that the Law of nature may be considered in two maners, that

that is to say, generally and specially : When it is considered generally, then it is referred to all creatures, as well reasonable, as unreasonable, for all unreasonable creatures live under a certaine rule to them given by nature necessarie for them to the consideration of their being, but of this Law it is not our intent to treat at this time. The law of nature specially considered : which is also called the Law of reason, pertaineth onely to creatures reasonable, that is, man, which is created to the image of God.

And this Law ought to bee kept as well among Jewes, and Gentiles, as among Christian men, and this Law is alway good and righteous, stirring & inclining a man to good, and abhorring euill. And as to the ordering of the deedes of man it is preferred befoze the law of God, and it is written in the heart of euery man teaching him what is to bee done, and what is to be fled : and because it is written in the heart, therefore it may not bee put away, ne it is neuer changeable by no diuersitie of place ne time : and therefore against this law, prescription, statute, nor customs, may not preuaile, and if any bee brought in against it, they bee not prescriptions, statutes, nor customs, but things voyd and against Justice, and all other Lawes : as well the Lawes of God, as to the acts of men, as other, be grounded thereupon.

Sec. With the Law of reason is written in the heart of euery man, as thou hast said befoze teaching him what is to bee done, & what is to

The 2. Chapter.

be fled, and the which thou sayest may neuer be put out of the heart, what needeth it then to haue any other law brought in, to order the acts and deeds of the people?

Do. Though the law of Reason may not be changed nor wholly put away, yet nevertheless before the Law written, it was greatly let and blinded by euill customes, and by many sins of the people, beside our originall sin. Inasmuch that it might hardy be discerned what was righteous, and what vnrightheous, a what was good, and what euill. Wherefoze it is necessary for good order of the people, to haue many things added to the law of reason, as wel by the church, as by secular Princes, according to the manners of the Countre and of the people, where such additions shoulde bee exercised. And this law of reason differeth from the law of God in two maners. For the Law of God is given by reuelation of God, and this law is given by a naturall light of vnderstanding. And alio the law of God ordereth a man of it selfe by a right way to the felicitie that ever shall endure. And the law of reason ordereth a man to the felicity of this life.

St. But what be the things that the Law of reason teacheth to be done, and what to be fled, I pray thee shew me?

Doct. The law of reason teacheth that good is to be loved, and euill is to be fled. Also that thou shalt doe to another that thou wouldest another shoulde doe to thee. And that we may doe nothing against truely. And that a man must liue peacefully with other. That Iu-

stice

The 2. Chapter.

5

Justice is to be done to every man, and also that wrong is not to be done to any man.

And that also a trespasser is worthy to be punished, and such other : of the which follow diuers other secundarie commandements, the which be as necessarie conclusions, deriued of the first. As of that commandement that god is to be beloued, it followeth that a man shall loue his benefactor : for a benefactor in that he is a benefactor, includeth in him a reason of goodnesse, for else he ought not to be called a benefactor, that is to say, a good doer, but an euill doer. And so in that he is a benefactor, he is to be beloued in all times, and in all places. And this law also suffereth many things to be done, as that it is lawfull to put away force with force. And that it is lawfull for every man to defend himself and his goods against an vniuersall power. And this Law runneth with euerie mans law, and also with the Law of God, as to the deeds of man, and must be alwayes kept and obserued, and shall alway declare what ought to follow vpon the generall rules of the Law of man, and shall restrain them if they be any thing contrarie vnto it.

And here it is to be understood, that, after some men, the Law whereby all things were in common, was neuer of the Law of Reason, but onely in the time of extreame necessitie. For they say, that the Law of reason may not be changed, but they say, it is euident that the Law whereby all things should be in common, is changed, wherefore they con-

The 3. Chapter.

conclude, that was neuer the Law of Mo-
son.

¶ Of the law of God.

Cap. 3.

The Law of God is a certaine law given
by reuelation to a reasonable creature,
shewing him the will of God, willing
that creatures reasonable bee bound to doe a
thing, or not to doe it, for obtaining of the felicitie
eternall. And it is said for the obtaining of
the felicitie eternall, to exclude the lawes shewed
by reuelation of God for the politicall rule of
the people, the which be called Iudicialls. For
a law is not properly called the Law of God,
because it was shewed by reuelation of God,
but also because it directed a mā by the neereſt
way to the felicitie eternall, as beene the lawes
of the old Testament, that beene called Mo-
ralls, and the lawes of the Euangelists, the
which were shewed in much more excellēt ma-
ner, then the law of the old Testamēt was: for
that was shewed by the mediation of an An-
gell: But the Law of the Euangelists was
shewed by the meditation of our Lord Iesu
Christ, God and man; and the Law of God
is alway righteous and iust, for it is made
and given after the will of God. And therefore
all acts and deeds of man, bee called righteous
and iust, when they bee done according to the
Law of God, and bee conſozmable to it. Also
sometime a Law made by man is called the
law

law of God: As when a law taketh his principall ground vpon the Law of God, and is made for the declaration or confirmation of the faith, and to put away heresies, as diuers lawes Canons, and also diuers lawes made by the common people sometime do. The which therefore are rather to bee called the Law of God, than the Law of man. Yet neuerthelesse, all the Lawes Canon bee not the Lawes of God: for many of them be made onely for the politicall rule and conseruation of the people. Whereupon Iohn Gerson in the treatise of the Spirituall life of the Soule, the second Lesson, and the third Copolarie, saith thus: All the Canons of Bishops nor their decrees bee not the Law of God: for many of them bee made onely for the politicall conseruation of the people. And if any man will say, Bee not all the goods of the Church spirituall, for they belong vnto the spirituallie, and lead to the spirituallie? Wee answer: That in the whole politicall conseruation of the people, there bee some specially deputed and dedicated to the seruice of God, the which most specially (as by an excellencie) are called spirituall men, as religious men are. And other, though they walke in the way of God, yet neuerthelesse, because their office is most specially to bee occupied about such things as pertaine to the Common-wealth, and to the good order of the people, they bee therefore called secular men or lay men. Neuerthelesse, the goods of the first may no more bee called Spirituall, than the goods of the other, for they be things more

The 3. Chapter.

temporall, and keeping the body as they doe fit the other. And by like reason, Lawes made for the politicall order of the Church, be called many times spirituall, or the Lawes of God, Nevertheless, it is but improperly. And other be called Civill, or the Lawes of man. And in this point many be oft times deceived, and also deceive other, the which iudge the things to be spirituall, the which all men know be things temporall and carnall. These be the words of Iohn Gerson in the place alledged before. Furthermore, beside the Law of reason, and the law of man, it was necessarie to have the Law of God, for foure reasons.

The first, because man is ordained to þ end of the eternall felicitie, the which exceedeth the proportion and facultie of mans power. Therefore it was necessarie that beside the Lawe of reason, and the Law of man, hee should bee directed to his end by a Law of God.

Secondly, forasmuch as for the uncertainty of mans iudgement specially of things peculiar and seldome falling, it happened oft times to follow diuers iudgements of diuers men, & diuersities of lawes, and therefore to the intent that a man without any doubt may know what he should do, and what he should not doe: It was necessarie that hee should bee directed in all his dooings by a Law heavenly given by God, the which is so apparant, that no man may shewne from it, as is the Law of God.

Thirdly, man may only make a law of such things as hee may iudge vpon, and the iudgement of man may not be of inward things, but
only

onely of outward things, and neuerthelesse it belongeth to perfection that a man bee well ordered in both, that is to say, aswell inward as outward. Therefore it was necessary to haue the Law of GOD, the which should order a man aswell of inward things, as of outward things.

The fourth is, because as Saint Augustine saith in the first booke of free Arbitrement, the law of man may not punish all offences: for if all offences should bee punished, the common wealth should be hurt, as is of contracts. For it cannot bee auoided, but that as long as contracts bee suffered, many offences shall follow thereby, & yet they bee suffered for the common wealth. And therefore that no vill should bee unpunished, it was necessary to haue the Law of God that should leaue no euill unpunished.

¶ Of the Law of Man.

Cap. 4.

The Law of man (the which sometime is called the law positive) is deriued by reason, as a thing which is necessarie & probably following of the Law of reason, & of the law of God. And that is called probable in that it appeareth to many, & especially to wise men, to be true. And therefore in euery law positive well made, is somewhat of the Law of reason, and of the law of God. And to discerne the law of God & the law of reason frō the law positive, is verie hard. And though it bee hard, yet it is much

The 4. Chapter.

much necessarie in every mozall doctrine, and in all Lawes made for the cōmon wealth. And that the law of man bee iust and rightwise, & o things bee necessarie, that is to say: wisdome and authoritie. Wisdome, that hee may iudge after reason what is to bee done for the Communitie, & what is expedient for a peaceable conseruation and necessarie sustentation of them. Authoritie, that hee haue authoritie to make Lawes, for the Law is detiued of Ligare, that is to say, to bind. But the sentence of a wise man doth not bind the Communitie, if hee haue no title ouer them. Also to euerie good Law bee required these properties, that is to say, that it be honest, rightwise, possible in it selfe, and after the custome of the countrie, conuenient for the place and time, necessarie, profitable, and also manifest, that it be not captious by any darke sentence, ne mixt with any priuat wealth, but all made for the common wealth. And after Saint Bridget in the 4. booke in the hundred twentie nine chapter, Euerie good law is ordained to the health of the soule, and to the fulfilling of the Lawes of God, and to induce the people to shie euill desires, and to do good workes. Also the Cardinal of Camerer writteth, whatsoeuer is righteous in the law of Man, is righteous in the law of God. For euerie mans Law must be consonant to the Law of God. And therfore the Lawes of Princes, the commandements of Prelates, the statutes of Communities, ne yet the Ordinance of the Church is not righteous nor obligatorie, but it be consonant to the law of God.

And

And of such a Lawe of man that is consonant to the Lawe of God, it appeareth who hath right to Lands and goods, and who not: For whatsoever a man hath by such Lawes of man, hee hath righteously. And whatsoever is hath against such Lawes, is vnrighteously had.

For Lawes of man not contrarie to the lawe of God, nor to the lawe of reason, must be obserued in the lawe of the soule: and hee that despiseth them, despiseth God, and resisteth God. And furthermoze as Gratian saith, because euill men feare to offend for feare of paine: Therefore it was necessarie that diuers paines should be ordeined for diuers offences, as Physitions ordeined diuers remedies for seuerall diseases. And such paines be ordeined by the makers of Lawes, after the necessitie of the time, and after the disposition of the people. And though that lawe that ordeined such paines hath thereby a conformance to the Lawe of God, (for the lawe of God commaundeth that the people shall take away euill from amongst themselves) yet they belong not so much to the Lawe of God, but that other paines (standing the first principles) might bee ordeined and appointed therefore, that is the lawe that is called most properly the Lawe Politique, and the Lawe of man.

And the Philosopher said in his third booke of his Ethikes, that the intent of a maker of a law is to make the people good, and to bring them to vertue. And although I haue somewhat in a generall speeche that whereupon the Lawe of
Eng:

The 5. Chapter.

England is grounded (for of necessity it must be grounded of the said lawes, that is to say, of the law Eternall, of the law of Reason, and of the law of God) Nevertheless, I pray thee shew me moze specially whereupon it is grounded as thou thinkest, as thou before hast promised to doe.

Str. I will with good Will doe therein that lyeth in mee, for thou hast shewed mee a right, plaine and straight way thereto. The fore thou shalt vnderstand, that the Law of England is grounded vpon sixe principall grounds first it is grounded on the Law of Reason. Secondly, on the Law of God. Thirdly, on diuers generall Customes of the Realme. Fourthly, on diuers Principles that be called Maximes. Fifthly, on diuers particuler Customes. Sixthly, on diuers Statutes made in Parliaments by the King, and by the Common Counsell of the Realme. Of which grounds I shall speake by order as they be rehearsed before. And first of the Law of Reason.

¶ Of the first ground of the Law of England.

Cap. 5.

The first ground of the Law of England is the Law of Reason, whereof thou hast treated before in the 2. Chap. the which is kept in this Realme, as it is in all other Realmes, as of necessity it must needs be (as thou hast said before.) D. But I would knowe what is called the Law of Nature after the law of Eng.

England. Sr. It is not vsed among them that be learned in the Lawes of England to reason what thing is commanded or prohibited by the law of nature, & what not, but all the reasoning in that behalfe is vnder this maner. As when any thing is grounded vpon the law of nature, they say, that reason wil & such a thing be done, and if it be prohibited by the law of nature, they say it is against reason, or that reason will not suffer that to be done. Doct. Then I pray thee shew me what they that be learned in the lawes of the realme hold to be commanded or prohibited by the law of nature, vnder such termes and after such manner as is vsed among them that be learned in the said lawes.

Sr. There be put by them & be learned in the lawes of England two degrees of the Law of Reason, that is to say, the law of reason primary, & the law of reason secundary: by the law of reason primarie be prohibited in the Lawes of England murder (that is & death of him that is innocent) perurie, deceit, breaking of the peace, & many other like And by the same law also, it is lawfull for a man to defend himselfe against an vniust power, so he keepe due circumstance. And also, if any promise be made by man as to the bodie it is by the law of reason hold in the lawes of England. The other is called the law of secundarie reason, the which is divided into two branches, that is to say, into the law of secundarie reason generall, and into a law of secundarie reason particular. The law of a secundarie reason generall, is grounded and deriued of the generall Law, or generall custome

The 5. Chapter.

custome of proprietie, whereby goods moveable and unmoveable be brought into a certain property, so that everie man may know his owne thing. And by this branch bee prohibited in the Lawes of England disseisins, trespassse in lands & goods, rescusse, theft, unlawfull withholding of another mans goods, & such other. And by the same law it is a ground in the law of England, that satisfaction must be made for a trespassse, and that restitution must be made of such goods as one man hath that belong to another man, the debts must be paid, covenants fulfilled, & such other. And because disseisins, trespassse in lands and goods, theft, & other, had not bene knowne, if the lawe of proprietie had not bin ordained: Therefore all things that be derived by reason out of the said law of proprietie, be called the law of reason secundary generall, for the law of Property is generally kept in all countries.

The law of reason secundarie particular, is the law that is derived upon diuers Customes generall and particular, & of diuers Maximes and Statutes ordained in this realme. And it is called the law of reason secundarie particular, because the reason in that case is derived of such a law that is onely holden for law in this realme, and in none other realme.

Doct. I pray thee shew me some special case of such a law of Reason secundarie particular for an example. Sc. There is a Law in England, which is Law of custome, that if a man take a Distresse lawfully, that he shall put it in pound ouert, there to remaine till hee bee satisfied

fied of that hee distrained for. And then there-
 upon may bee asked this question, that if the
 beasts die in pound for lacke of meat, at whose
 perill die they, whether die they at the perill of
 him that distrained, or of him that oweth the
 beasts? D. If the law bee as thou sayest, and
 that a man for a iust cause taketh a distresse, &
 putteth it in the pound Quert, and no Law
 compelleth him that distraineth to giue them
 meate, then it seemeth of reason that if the di-
 stresse die in pound for lacke of meate, that it
 died at the perill of him that oweth the beasts,
 and not of him that distrained, for in him that
 distrained there can be assigned no default, but
 in the other may bee assigned a default, because
 the rent was unpaid. Siu. Thou hast giuen a
 true iudgement, and who hath taught thee to
 doe so, but reason deriued of the said generall
 custome? And the law is so full of such secun-
 darie reasons deriued out of the generall Cu-
 stomes and Maximes of the realme, that some
 men haue affirmed that al the law of the realm,
 is the law of reason. But that cannot be pro-
 ued as me seemeth, as I haue partly shewed
 befoze, and moze fully will shew after. And it
 is not much vsed in the Lawes of England, to
 reason what law is groundded vpon the Law
 of the first reason Primarie, or on the Law
 of reason secundarie for they bee most com-
 monly openly knowne of themselves, but for
 the knowledge of the Law of reason secunda-
 rie is greater difficultie, and therefore therein
 dependeth much the manner and forme of ar-
 guments in the Lawes of England.

The 6. Chapter.

And it is to be noted that all the deriving of Reason in the Law of England proceedeth of the first principles of the law, or of something that is derived of them: and therefore no man may right wisely iudge ne groundly reason in the lawes of England, if he be ignorant in the first principles. Also all birds, fowles, wild beasts of Forrests & warren, & such other bee excepted by the Lawes of England, out of the said general law and custome of propriety. For by the lawes of the realme no propriety may be of them in any person, vnles they be tame. Nevertheless the eggs of Hawks, Herons, or such other as build in the ground of any person, bee adiudged by the said Lawes to belong to him that oweth the ground.

¶ Of the second ground of the law of England.

Cap. 6.

THE second ground of the law of England is the law of God, & therefore for punishment of the that offend against the Law of God, it is enquired in many courts in this Realme, if any hold any opinion secretly or in any other manner against the true Catholike Faith: and also if any general custome were directly against the law of God, or if any Statute were made directly against it: as it were ordained that no almes should be given for necessity, the custome & Statute were void. Nevertheless the Statute made in the 34. yeare of King Ed. 3. wherby it is ordained that no man vnder paine of imprisonment shall give any almes to any

any valiant beggers þ̄ may wel laboꝝ, that they may so be compelled to labour foꝝ their liuing, is a good statute, foꝝ it obserueth the intent of the law of God. And also by anthozitie of this law, there is a ground in the laws of England that he that is Accursed shall maintaine no action in the kings court, except it be in very few cases, so that the same excoꝛmunication bee certified befoꝝe the kings Iustices in such maner as the law of the Realme hath appointed: and by the anthozitie also of this ground, the law of England admitteth the spirituall iurisdiction of Dismes and offerings, and of all other things that of right belong vnto it, and receiueth also all lawes of the Church duely made, & that exceed not the power of them that made the. In somuch that in many cases it behoueth þ̄ kings Iustices to iudge after the laws of the church. Do. How may that be, that the kings Iustices should iudge in the kings courts after the law of the Church? foꝝ it seemeth that the Church should rather giue iudgemēt in such things as it may make laws of, than the kings Iustices. St. That may be done in many cases, whereof I shall foꝝ an example put this case. If a writ of right of ward bee brought of the bodie &c. And the tenāť confessing the tenure, & the nonage of the infant saith, that the infant was married in his ancestoꝝs daies &c. whereupon xii. men be swoꝛne, which giue this verdict, that the infant was married in the life of his ancestoꝝs, and that the woman in the life of his ancestour sued a diuozce, whereupon sentence was giuen that they should be diuozced, and that the

The 6. Chapter.

heire appealed, which hangeth yet vndiscussed, praying the ayd of the Justice to know whether the infant in this case shall be said married or no. In this case if the law of the Church be that the said sentence of Diuorice standeth in his strength & vertue vntill it be adnulled vpon the said appeale: That the infant at the death of his ancestoz, was vnmarried, because the first marriage was adnulled by that diuorice: and if the law of the church be, that the sentence of the diuorice standeth not in effect till it bee affirmed vpon the said appeale, then is the infant yet married, so that the value of his marriage cannot belong vnto the Lord, and therefore in this case iudgement conditional shalbe giuen &c. and in likewise the Kings Iustices in many other cases shall iudge after the Law of the Church, like as the spirituall Iudges must in many cases, for in their iudgemēt after the kings laws. D. How may that bee, that the spirituall Iudges should iudge after the kings laws? I pray thee shew mee some certaine case thereof. Stu. Though it be somewhat a digression from our first purpose, yet I will not withsay thy desire, but will with good will put thee a case or two thereof, that thou maist the better perceiue what I meane. If A. & B. haue goods jointly, and A. by his last will bequeath his portion therein to C. & maketh the said B. his Executor & dieth, and C. asketh the execution of this will in the spiritual court: in this case the Iudges there be bound to iudge that will to be void, because it is void by the lawes of this realme. And likewise if a man bee outlawed, and after by

by his will bequeath certaine goods to John at Stile, & make his executors and oye, the king seileth his goods & after giveth them againe to the executors, & after J. at Stile sueth a citati- on out of the spirituall court against the execu- tors, to have execution of the will: in this case the Judges of the spirituall court must iudge & will to be void, as the law of the realme is that it is, and yet there is no such law of forfeiture of goods by outlawrie in the spirituall law.

¶ Of the third ground of the Law of England.

Cap. 7.

The third ground of the law of England, standeth vpon diuers Generall customes of old time vled thzough all the realme, which haue bin accepted and approued by our soueraigne lord the K. & his progenitors, & all his subiects: & because the said customes be nei- ther against the Law of God, nor the Law of reason, and haue bene alway taken to bee good and necessarie for the commonwealth of all the Realme: Therefore they haue obtained the strength of the law, inso much that he that doth against them, doth against Justice: and these be the customes & properly be called the Com- mon Law: and it shall alway be determined by the Iustices whether there be any such gene- rall custome or not, and not by 12. men: and of these generall customes, and of certaine princi- ples & be called Maximes, which also take ef- fect by the old custome of the Realme (as shall appeare in the Chapter next following) de- pendeth most part of the law of this Realme,

The 7. Chapter.

And therefore our soueraigne lord the king at his Cozonation among other things taketh a solenne oath, that he shall cause all the customs of his realme faithfully to be obserued. Do. I praise thes shew mes some of these generall customs. Sc. I will with good will, a first I shall shew thes how the custome of the Realme is the vertie ground of diuers Courts in the Realme, that is to say, of the Thaurcery, of the Ex. bench, of the common pleas, and the Exchequer, the which bee Courts of record, because none may sit as Judges in these courts but by the kings letters patents. And these Courts haue diuers authorities, whereof it is not to treat at this time. Other Courts there be al' o only grounded by the custome of the realm, that bee of much lesse authority than the courts before rehearsed. As in euery shire within the realme, there is a court that is called the countie, & another that is called the shertis Tozne, & in euery manoz is a court y is called a court baron, and to euery faire & market is incident a Court that is called a court of Wapswaters. And though in some statutes is made mention sometime of the said Courts, yet neuer thelesse of the first institution of the said courts, & that such Courts should bee, there is no statute nor law witten in the Lawes of England. And so all the ground and beginning of the sayde courts depend vpon the custome of the realme, the which custome is of so high authority, that the said courts ne their authorities may not be altered, ne their names changed without Parliament.

Also

Also by the old custome of the Realme, no man shall be taken, imprisoned, disseised, nor otherwise destroyed, but he be put to answer by the law of the land, and this custome is confirmed by the Statute of Magna charta cap. 26.

Also by the old custome of the Realme, all men great and small shall do and receive iustice in the kings Courts, and this custome is confirmed by the Statute of Maillb. cap. 1.

Also by the old custome of the Realme, the eldest sonne is onely heire to his Ancestoz, and if there be no sonnes but daughters, then all the daughters shall bee heires. And so it is of sisters and other kinswomen. And if there bee neither sonne, daughter, brother, nor sister, then shal the inheritance descend to the next kinsma or kinswoman of the whole blood to him that had the inheritance, of how many degrees soeuer they be from him. And if there be no heire generall nor speciall, then the land shall escheat to the Lord of whom the land is holden.

Also by the old custome of the realme, lands shall neuer ascend, or descend, from the sonne to the father or mother, nor to any o' her ancestoz in the right line, but it shall rather escheat to the Lord of the fee.

Also if any Alien haue a sonne that is an Alien, and after is made Denizen, and hath an other sonne, and after purchaseth lands & dyeth, the youngest sonne shall inherit as heire, and not the eldest.

Also if there be three brethren, & the middlest brother purchase Landes and dyeth without heire of his body, the eldest brother shall inherit
as

The 7. Chapter.

as heire to him, and not the yonger brother.

And if land in fee simple descend to a man by the part of his father, & he dieth without heires of his bodie, then the inheritance shall descend to the next heire of the part of his father. And if there be no such heire of the part of his father, then if the father purchaseth the lands, it shall go to the next heire of the fathers mother, & not to the next heire of the sonnes mother, but it shall rather escheat to the Lord of the fee. But if a man purchase lands to him & to his heires, & die without heire of his body, as is said before, then the land shall descend to the next heire of the part of his father, if there be any, & if not, then to the next heire of the part of his mother.

Also the sonne purchaseth lands in fee, and dieth without heire of his bodie, the Land shall descend to his uncle, and shall not ascend to his father: But if the father haue a sonne though it bee many yeares after the death of the elder brother, yet that sonne shall put out his uncle, and shall enjoy the Land as heire to the elder brother for ever.

Also by the custome of the Realme, the child that is bozne before esponsels is Bastard, and shall not inherit.

Also the custome of the realm is, that no manner of goods nor chattels real nor personal shall neuer go to the heire, but to the executors, or to the Ordinarie, or administrators.

Also the husband shall haue all the chattels personals that his wife had at the time of the esponsels, or after, and also chattels real if he ouerline his wife: But if he sell or giue away the
the

the chattels reals & die, by that sole or gift the interest of the wife is determined, or else they shall remain to the wife, if she ouerlive her husband: also the husband shall have all the inheritance of his wife, wherof he was seised in deed in the right of his wife during the espousels in fee, or in fee taile generall, for terme of life, if he have any child by her, to hold as tenant by the curtesie of England, & the wife shall have the third part of the inheritance of her husband, wherof he was seised in deed or in law after the espousels &c. But in that case the wife at the death of her husband must be of the age of nine yere or above, or els she shall have no dowrie. D. What if the husband at his death be within the age of nine yeres? S. I suppose she shall yet have her dowry: also the old Law & Custome of the Realme is, that after the death of every tenant that holdeth his land by knights service, the Lord shall have the ward and marriage of the heir, til the heir come to the age of 21. yeres, & if the heir in that case be of full age at the death of his ancestor, then he shall pay to his Lord his reliefe, which at the common law was not certaine, but by the stat. of Mag. ch. it is put in certain: that is to say, for every whole knights fee to pay 4. s. and for a whole Barons to pay 4. marks for reliefe, & for a whole Freldom to pay 4. l. and after the rate. And if the heire of such a tenant be a woman, & she at the death of her ancestor be within the age of 14. yeres, then by the common law she should have bin in Ward onely til 14. yeres, but by the stat. of 21. 1. in such case she shall be in Ward till 16. yeres. And

The 7. Chapter.

And if at the death of her auncestoz shee bee of the age of 14. yeares oz aboue, she shall be out of ward, though the land be holden of the king, & then she shall pay reliefe as an heire male shall.

Also of lands holden in Socage, if the auncestoz die, his heire betng within the age of 14. yeares, the next friend of the heire to whom the inheritance may not discēd shal haue the ward of his bodie and lands, till he shall come to the age of 14. yeares, and then hee may enter. And when the heire cometh to the age of 21. yeares, then the gardein shall yeld him an account for the profits thereof by him received.

Also, such an heire in socage for his reliefe shall double his rent to the Lord the yere following the death of his auncestoz: As if his auncestoz held by xii. s. rent, the heire in the yere following shall pay the xii. s. for his rent, and other xii. s. for his reliefe, and the reliefe he must pay, though he be within age at the death of his auncestoz.

Also, there is an old Law and Custome in this Realme, that a frēhold by way of feoffement, gift, oz lease, passeth not without Lincerie of seisin be made bpō the lād according, though a deed of feoffement be thereof made a deliuered: But by way of surrender, partition, and exchange, a frēhold may passe without Lincerie.

Also if a man make a will of land, whereof he is seised in his demesne as of fee, that will is void: but if it had stood in feoffers hand, it had bene good. And also in London such a will is good by the custome of the citie if it be inrolled.

Also a lease for terme of yeres is but a chattel
by

by the law, and therefore it may passe without any liuerie of seisin : but otherwise it is of a state for terme of life for that it is a frehold in the Law, and therefore liuerie must be made or els the frehold passeth not.

Also by the old custome of the realme, a man may distraine for rent seruice of comon right: and also for a rent reserved vpon a gift in taile, a lease for terme of life, of peres, and at wil, & in such case the Lord may distraine the beasts of tenants, as soon as they come vpon the ground, but the beasts of strangers that come in but by maner of an escape, he may not distrain till they haue been leuant & couchant vpon the ground: but for debt vpon an obligation, nor vpon a contract, nor for account, ne yet for arrerages of account, nor for no maner of trespassse, reparations, nor such other, no man may distraine.

And by the old Custome of the realme all issues that shall bee iopned betweene partie and party in any court of record within the realme, except a few whereof it needeth not to treat at this time, must be tried by xii. free & lawful men of the visne that bee not of affinitie to none of the parties : and in other courts that be not of record, as in the county, court baron, hundred & such other like, they shall be tried by the oath of the parties, & not otherwise, vnles the parties assent that it shall be tried by the homage. And it is to be noted that lordes, barons, & all peres of the realme bee excepted out of such trialls if they will, but if they will willfully bee sworn therein, some say it is no error: and they may if they will haue a writ out of the Chancery directed

The 7. Chapter.

rected to the Sheriffe, commanding him that hee shall not impannell them vpon no enquest.

And of this that is said befoze it appeareth, that the customes aforesaid noz oher like bn- to them, whereof be very many in the lawes of Englad, cannot be pzoued to haue the strength of law onely by reason. For how may it bee pzoued by reason that the eldest sonne shall only inherite his father, and the yonger to haue no part, oz that the husband shall haue the whole land for terme of his life as tenant by the curtesie, in such manner as befoze appeareth, and that the wife shall haue onely the thirde part in the name of the dower, & that the husband shall haue all the goods of his wife as his owne, and that if hee die liuing the wife, that his executors shall haue the goods, and not the wife: all these and such other cannot be pzoued onely by reason that it should be so and no otherwise, although they bee reasonable, and that with the custome therein bled suffiseth in the Law, and a statute made against such generall customes ought to be obserued, because they be not meere- ly the law of reason.

Also the law of pzovertie is not the law of reason, but a law of custome, howbeit that it is kept, and is also most necessary to be kept in all realms, and among all people, and so it may be numbred among the generall customes of the realme, and it is to vnderstand that there is no statute that treateth of the beginning of the said customs, ne why they should be holden for law, and therefore after them that be learned in the lawes of the realm, the old custome of the realm

is the only and sufficient authoritie to them in that behalfe : and I pray thee shew mee what Doctozs hold therein, that is to say, whether a custome onely bee a sufficient authoritie of any Law. Do. Doctozs hold that a Law grounded vpon a custome is the most surest Lawe, but this thou must alwaies vnderstand therewith that such a custome is neither contrarie to the law of reason, nor the law of God. And now I pray thee shew mee somewhat of the Maximes of the law of England, whereof thou hast made mention before in the 4. Chapter. Stu. I will with good will.

¶ Of the 4. ground of the law of England.

Cap. 8.

The 4. ground of the law of England standeth in diuers principles that be called in the law Maximes, the which haue bin alwaies taken for law in this realm, so that it is not lawfull for any that is learned to deny the: for euery one of those Maximes is sufficient authoritie to himselfe. And which is a Maxime, and which not, shall alway be determined by the Judges, and not by xij. men. And it needeth not to assigne any reason, why they were first receiued for Maximes, for it sufficeth that they be not against the Law of reason, nor the law of God, & that they haue alway bin taken for a law. And such Maximes be not only holden for lawe, but also other cases like vnto the, and all things that necessarily follow vpon the same, are to be reduced to þ like law, & therefore most commonly there be assigned some reasons or
con-

The 8. Chapter.

consideration why such Maximes be reasonable, to the intent that other cases like, may the moze conveniently be applied to them. And they bee of the same strength & effect in the law as statutes be. And though the generall customes of the Realme, be the strength & warrant of the said Maximes as they bee of the generall customes of the realme, yet because the said generall customes be in maner knowne thzough the Realme, aswell to them that be vnlearned as learned, and may lightly bee had & knowne, and that with little studie; and the Maximes bee only knowne in the Kings Courts. or among them that take great studie in the Law of the Realme, and among few other persons: therefore they bee set in this wryting for seuerall grounds, and hee that listeth may so accompt them, or if hee will, hee may take them for no ground, after his pleasure. Of which Maximes I shall hereafter shew thee part.

First there is a Maxime, that Escuage vncertaine maketh Knights service.

Also there is another Maxime, that Escuage certaine maketh socage.

Also that he that holdeth by Castel gard, holdeth by knights service, but hee holdeth not by Escuage. And that hee that holdeth by r.p.s. to the gard of a castell, holdeth by socage.

Also there is a Maxime, that a Discent taketh away an entrie

Also, that no Prescription in Lands maketh a right.

Also, that a Prescription of rent and profits appzender out of land, maketh a right.

Also,

Also that the limitation of a prescription generally taken, is from the time that no mans mind runneth to the contrary.

Also that assignes may be made vpon lands giuen in fee. for terme of life, or for terme of yeres though no mention be made of assignes: and the same law is of a rent that is granted, but otherwile it is of a warrantie and of a covenant.

Also that a condition to auoid a freehold cannot be pleaded without deed, but to auoid a gift of chattell it may bee pleaded without deed.

Also that a release or confirmation made by him that at the tyme of the release or confirmation made, had no right, is void in the Lawe, though a right come to him after, except it bee with warrantie, and then it shal bar him of all right that hee shall haue after the warrantie made.

Also that a right or title of action that onely dependeth in action, cannot be giuen nor granted to none other but onely to the tenant of the ground, or to him that hath the reversion or remainder of the same.

Also that in an action of debt vpon a contract, the defendant may wage his Law, but otherwise it is vpon a lease of Landes for terme of yeres, or at will.

Also if that any exigent in case of felonie bee awarded against a man: he hath thereby forthwith forfeited his goods to the king.

Also if the sonne bee attainted in the life of the father, and after hee purchaseth his charter

The 8. Chapter.

of pardon of the king, and after the father dyeth: In this case the land shall escheate to the Lord of the fee, in so much that though hee haue a younger brother, yet the land shall not descend to him: for by the attainder of the elder brother the blood is corrupt, and the father, in law, dyed without heire.

Also if an Abbot or Prior alien the Landes of his house and dyeth, in this case, though his successor haue right to the lands, yet he may not enter, but hee must take his action that is appointed him by law.

Also, there is a Maxime in the law, that if a villaine purchase lands and the Lord enter, he shall enjoy the land as his owne: but if the villaine alien before the Lord enter, the alienation is good And the same law is of goods.

Also, if a man steale goods to the value of twelue pence or above, it is felony, and he shall dye for it. And if it bee vnder the value of xij. pence, then it is but petite larceny, and hee shall not dye for it, but shall be otherwise punished after the discretion of the Judges, except it bee taken from the Person: for if a man take any thing how little soeuer it bee, from a mans person feloniously, it is called robbery, and hee shall die for it.

Also, hee that is arraigned vpon an Inditement of Felony shall be admitted in fauour of life to challenge xxxvj. Jurors peremptorily, but if hee challenge any above that number, the Law taketh him as one that hath refused the Law, because he hath refused three whole Enquests, and therefore hee shall dye: but
with

With cause hee may challenge as many as hee hath cause of challenge to. And further it is to be understood, that such peremptorie challenge shall not be admitted in appeale, because it is at the suit of the partie.

Also, the land of every man is in the Law enclosed from other, though it lie in the open field. And therefore if a man doe trespass therein, the writt shall be Quare clausum fregit.

Also the rents, commons of pasture, of turbarie, reversiones, remainders, nor such other things which lie not in manuell occupation, may not bee given nor graunted to none other without writing.

Also that hee that reconereth debt or damages in the Kings Courts by such an action wherein a Capias lay in the Proesse, may within a yeare after the reconerie, have a Capias ad satisfaciendum to take the bodie of the defendand; and to commit him to prison till hee haue paid the debt and damages: but if there lay no Capias in the first action, then the plaintife shall haue no Capias ad satisfaciendum, but must take a Fieri facias, or an Elegit within the yeare, or a Scire facias after the yeare, or within the yeare if he will.

Also, if a release or confirmation be made to him, that at the time of the release made had nothing in the Land ac. the release or confirmation is void, except in certaine cases, as to bouch, and certaine other which need not here to be remembred.

Also there is a Maxime in the law of England, that the King may disseise no man, nor

The 8. Chapter.

that no man may disseise the King, ne pull any reuerſion or remainder out of him.

Also the Kings excellencie is so high in the law, that no freehold may be giuen to the King, ne bee deriued from him, but by matter of Record.

Also there was sometime a Maxime and a Law of England, that no man should haue a writ of right, but by speciall suit to the King, & for a fine to bee made in the Chancerie for it. But these Maximes be changed by the Stat. of Magna charta cap. 16. where it is said thus. Nulli negabimus, nulli vendemus rectum vel iustitiam. And by the words Nulli negabimus, a man shall haue a writ of right of course in the Chancerie without suing to the King for it. And by the words Nulli vendemus, he shall haue it without fine: & so, many times the old Maximes of the Law be changed by Statutes. Also though it bee reasonable, that for the manifold diuersities of actions that be in the Lawes of England, that there should bee diuersities of Proses, as in the reall actions after one maner and in personall actions after another manner: Yet it cannot be proued merely by reason, that the same Proses ought to bee had and none other: for by Statute it might be altered. And so the ground of the said Proses is to bee referred onely to the Maximes and Customs of the Realme.

And I haue shewed thee these Maximes before rehearsed, not to the intent to shew thee specially what is the cause of the law in them, for that would aske a great respite. But I haue

have shewed them only, to the intent that thou maist perceiue that the said Maximes & other like, may bee conveniently set for one of the grounds of the Lawes of England. Moreover there be diuers cases, whereof I am in doubt whether they be only Maximes of the law, or that they be grounded vpon the law of reason, wherein I pray thee let mee heare thine opinion.

Do. I pray thee shew those cases that thou meanest, and I shall make thee answer therein as I shall see cause.

¶ Hereafter follow diuers cases, wherein the Student doubteth whether they be only Maximes of the Law, or that they bee grounded vpon the Law of Reason.

Cap. 9.

The law of England is, that if a man command another to do a trespassse, & he doth it, that the commander is a trespasser.

And I am in doubt whether that it be only by a Maxime of the law, or that it be by the Law of reason.

Also, I am in doubt vpon what Law it is grounded, that the accesorie shall not be put to answer before the principall &c.

Also, the law is, that if an Abbot buy a thing that cometh to the vse of the house, and dieth, that his successor shall be charged. And I am somewhat in doubt vpon what ground that

The 9. Chapter.

Law dependeth.

Also, that hee that hath possession of land, though it be by disseisin, hath right against all men, but against him that hath right.

Also, that if an action reall be sued against any man that hath nothing in the thing demanded, the writ shall abate at the common Law.

Also, that the alienation of the tenant hanging the writ, nor his entrie into religion, or if he be made a knight, or if she be a woman and take an husband hanging the writ, that the writ shall not abate.

Also, if land and rent that is going out of the same land, come into one mans hand of like estate, and like suretie of title, the rent is extinct.

Also, if land disceind to him that hath right to the same land before, he shall be remitted to his better title if he will.

Also, if two titles be concurrant together, that the eldest title shall be preferred.

Also, that everie man is bound to make recompence, for such hurt as his beasts shall doe in the cozne or grasse of his neyghbour, though he know not that they were there.

Also, if the demandant or plaintife hanging his writ, will enter into the thing demanded, his writ shall abate. And it is many times verie hard & of great difficultie to know what cases of the Law of England be grounded vpon the Law of reason, and what vpon custome of the Realme, and though it bee hard to discusse it, it is very necessary to be knowne, for the knowledge of the perfect reason of the
Law.

law : & if any man think that these cases before rehearsed be grounded vpon the law of reason, then he may referre them to the first ground of the law of England, which is the law of reason, whereof is made mention in the 5. chapter. And if any man thinke that they bee grounded vpon the law of custome, then he may refer the to the Maxims of the law, which be assigned for the fourth ground of the Law of England, whereof mention is made in the 8. Cha. as before appeareth.

Do. But I pray thee shew me by what authority it is proued in the laws of England, that the cases which thou hast put before in the 8. Chap. and such other which thou callest Maxims ought not to be denied, but ought to be taken as Maxims. For sith they cannot bee proued by reason as thou agreeest thy selfe they cannot, they may as lightly bee denied as affirmed, vnles there be some sufficient authority to approue them.

Sir. Many of the Customes and Maxims of the Lawes of England bee knowne by the vse and the custome of the realme so apparantly that it needeth not to haue any Law written thereof. For what needeth it to haue any Lawe written that the eldest son shall inherite his father : or that all the daughters shall inherite together as one heire, if there bee no sonne: or that the husband shall haue the goods and chattels of his wife that shee hath at the time of the espousels, or after: or that a bastard shall not inherite as heire : or the executors shall haue the disposition of all the goods of their

The 10. Chapter.

their testatoz: and if there be no executoz that the Ordinarie shall haue it, & the heire shal not meddle with the goods of his auncestoz, but if any particular customes helpe him.

The other Maximes & customes of the lawe shal be not so openly knowne among the people, may be knowne partly by the Lawe of Reason, and partly by the booke of the Lawes of England called Yeares and Termes, and partly by diuers Records remaining in the R. Courts and in the Treasorie: and specially by a booke called the Register, and also by diuers statutes wherein many of the said Customes & Maximes be oft recited, as to a diligent Searcher will evidently appaie.

¶ Of the first ground of the Law of England.

Cap. 10.

The first ground of the Law of England standeth in diuers particular customs binded in diuers countie, towne, citie, and lordships in this realme, the which particular customes, because they be not against the law of reason, nor the law of God, though they bee against the said generall Customes or Maximes of the Law, yet neuerthelesse they stand in effect and be taken for law: but if it rise in question in the kings courts, whether there be any such particular custome or not, it shall bee tried by xij men, and not by the Judges, except the same particular custome bee of Record in the

the same Court. Of which particular Customes, I haue hereafter noted some for an example.

First there is a custome in Kent that is called Gavelkind, that all the brethren shall inherit together, as sisters at the Common Law.

Also there is another particular Custome, that is called Burghenglish, where the younger sonne shall inherit before the eldest, and that custome is in Nottingham.

Also there is a custome in the Citie of London, that freemen there, may by their testament inrolled, bequeath their lands that they be setted of to whom they will, except to Mortmaine. And if they be Citizens and Freemen, that they may also bequeath their Landes to Mortmaine.

Also in Gavelkind, though the father be hanged, the sonne shall inherit. For their custome is, The Father to the bough, the Son to the plough.

Also in some Countries the wife shall haue the halfe of the husbands lands in the name of her dower, as long as she liueth sole.

And in some countrie the husband shall haue the halfe of the inheritance of his wife, though he haue no issue by her.

Also in some Countrie an Infant when hee is of age of xij. yerres may make a feoffment, and the feoffment good. And in some Countrie when he can meat an eile of cloth.

¶ Of the sixt ground of the Law of
England.

Cap.

The 11. Chapter.

Cap. 11.

The first ground of the Law of England standeth in diuers statutes made by our Seneraign Lord the King & his progenitors, & by the Lords spirituall & temporall, and the Commons in diuers Parliaments, in such cases where the law of reason, the law of God, Customes, Maximes, ne other grounds of the law seemed not to be sufficient to punish euill men, and to reward good men. And I remember not, that I haue scene any other grounds of the Law of England, but onely these that I haue before remembred. Furthermore it appeareth of that I haue said before, that oft times two or thre grounds of the law of England must bee ioined together, or that the plaintif can open & declare his right, as it may appeare by this example. If a man enter into another mans land by force, and after maketh fessment for maintenāce to defraud the plaintif from his action: In this case it appeareth that the said vnlawfull entrie is prohibited by the Law of reason, but the plaintif shall recover treble damages, that is by reason of the Statute made in the 8. yeare of king H 6. cap. 9. And that the damages shalbe celled by xij. mē, that is by the custome of the realme. And so in this case, thre grounds of the law of England maintaine the plaintifes action.

And so it is in diuers other cases that neede not to be remembred now. And thus I make an end for this time, to speake any further of the grounds of the law of England. D. I thanke the

thee for the great paine that thou hast taken thereto. Nevertheless, forasmuch as it appeareth that thou hast said before, that the learned men of the Law of England pretend to vertifie, that the Law of England will nothing do, ne attempt against the law of Reason, nor the Law of God, I pray thee answer me to some questions grounded vpon the Law of England, how as thou thinkest, the Law may stand with reason or conscience in them.

Sc. But the case, and I shall make answer therein as well as I can.

¶ The first question of the Doctor, of the Law of England and conscience.

Cap. 12.

I have heard say, that if a man that is bound in an Obligation pay the money, but he taketh no acquittance, or if he take one and it happeneth him to leese it, that in that case hee shall bee compelled by the Lawes of England to pay the money againe. And how may it be said then, that that Law standeth with reason and conscience: for as it is grounded vpon the Law of Reason, that debts ought of right to bee payed, so it is grounded vpon the Law of Reason (as it seemeth) that when they be payed, that hee that payed them should bee discharged. Sc. First thou must vnderstand, that it is not the Law of England, that if a man that is bound in an Obligation pay the money without Acquittance, or if hee

The 12. Chapter.

hee take acquittance and leese it, that therefore the law determineth that hee ought of right to pay the mony estwones, for that law were both against reason and conscience. But though it is so, that there is a generall Maxime in the law of England, that in an action of debt sued vpon an Obligation, the defendant shall not plead that he oweth not the mony, he can in no wise discharge himselfe in that action, but hee haue acquittance or some other writing sufficient in the Law, or some other thing like, witnessing that he hath paid the money: that is ordained by the Law to auoyd a great inconuenience that els might happen to come to many people: that is to say, that euerie man by a Nude parol, and by a bare Auerrement should auoyd an Obligation. Wherefore to auoyd that inconuenience, the Law hath ordained, that as the defendant is charged by a sufficient writing, that so hee must bee discharged by sufficient writing, or by some other thing of as high authoritie as the Obligation is. And though it may follow thereupon, that in some particular case a man by occasion of that generall Maxime may bee compelled to pay the money againe that hee paid before: Yet neuerthelesse, no default can be thereof assigned in the Law. For like as makers of Law take heed to such things as may oft fall, & do much hurt among the people, rather than to particular cases: So in likewise the generall grounds of the law of England, heed more what is good for many, than what is good for one singular person only. And because it should bee a hurt to many,

ii

if an Obligation should bee so lightly avoided by sword, therefore the Law specially pzeuenteth that hurt vnder such maner as befoze appeareth: and yet intendeth not, nor commandeth not, that the money of right ought to bee paid againe, but setteth a generall rule which is good and necessarie to all the people, & that euery man may well keepe without it be thzough his owne default. And if such default happen in any person, whereby he is without remedie at the common law, yet hee may bee holpen by a Subpena, and so hee may in many other cases where conscience serueth for him, that were too long to rehearse now.

Do. But I pray thee shew mee vnder what maner a man may be holpen by conscience. And whether he shall be holpen in the same court, or in another. St. Because it cannot bee well declared where a man shall bee holpen by conscience, & where not, but it be first knowne what conscience is, therefore because it pertaineth to thee most properly, to treat of the nature and qualitie of conscience, therefore I pray thee that thou wilt make mee some bziefe declaration of the nature and qualitie of conscience, & then I shall answer to thy question as well as I can. Do. I will with godd will do as thou saiest, and to the intent that thou maiest the better vnderstand that I shall say of conscience, I shall first shew thee what Sinderesis is, and then what reason is, and then what conscience is; and how these three differ among themselves, I shall somewhat touch.

¶ What

The 13. Chapter.

¶ What Sinderesis is.

Cap. 13.

Sinderesis is a natural power of the soule, set in the highest part thereof, mouing and stirring it to good, & abhorring euill. And therefore Sinderesis neuer sinneth nor erreth. And this Sinderesis our Lord put in man to the intent that the order of things should bee observed. For, after Saint Dionise, the wisdom of God joineth the beginning of the second things to the last of the first things: for Angell is of a nature to vnderstand without searching of reason, and to that nature man is ioined to Sinderesis, the which Sinderesis may not wholly be extincted neither in man, ne yet in damned soules. But neuertheless, as to the vse and exercise thereof, it may bee let for a time, either through the darkenesse of ignorance, or for vndiscreet delectation, or for the hardnesse of obstinacie. First by the darkenesse of ignorance Sinderesis may be let, that it shall not murmur against euill, because hee beleueth euill to be good, as it is in heretikes, the which, whē they die for the wickednesse of their error, beleene that they die for the vertie trueth of the faith. And by vndiscreet delectation, Sinderesis is sometime so overlaid, that remorse or grudge of conscience for that time can haue no place. For the hardness of obstinacy Sinderesis is also let that it may not stirre to goodnesse, as it is in damned soules that bee so obstinate in euill, that

that they may neuer be inclined to good. And though Sinderesis may be said to that point extinct in damned soules; yet it may not bee said that it is fully extinct to all intents. For they alway murmure against the euill of the paine that they suffer for sinne, and so it may not bee said that it is vniuersally, and to all intents, and to all times extinct. And this Sinderesis is the beginning of all things that may bee learned by speculation or Studie, and ministreth the generall grounds and principles thereof: and also of all things that are to be done by man. An example of such things as may be learned by speculation appeareth thus: Sinderesis saith that enerie whole thing is moze than any one part of the same thing, & that is a sure ground that neuer faileth. And an example of things that are to be done, or not to be done: as where Sinderesis saith no euill is to be done, but that goodnesse is to be done and folloved, and euill to be fled, and such other.

And therefore Sinderesis is called by some men, the Law of reason, for it ministreth the principles of the law of reason, the which be in euery man by nature, in that he is a reasonable creature.

¶ Of Reason.

Cap. 14.

When the first man Adam was created, hee receined of God a double eye, that is to

The 14. Chapter.

to say, an outward eye, whereby hee might see visible things, and know his bodily enemies and eschew them. And an inward eye that is the eye of reason, whereby hee might see his spirituall enemies that fight against his soule and beware of them. And among all gifts that God gaue to man, this gift of reason is the most noblest, for thereby man p̄celleth all beasts, and is made like to the dignitie of Angels, discerning troth from falshood, and euill from good. Wherefore hee goeth farre from the effect that he was made to, when he taketh not heed to the trueth, or when hee p̄ferreth euill before good.

And therefore after Doctors, reason is the power of the soule, that discerneth betweene good and euill, and betweene good and better, comparing the other: the which also sheweth vertues, loneth good, and slepeth vices. And reason is called righteous and good, for it is confozmable to the will of G D, and that the first thing, and the first rule that all things must be ruled by. And reason that is not righteous nor straight, but that is said culpable, is either because she is deceined with an Error that might bee overcome, or else through her pride or slothfulnesse shee enquireth not for knowledge of the trueth that ought to bee enquired. Also reason is diuided into two parts, that is to say, into the higher part and into the lower part.

The higher part hideth heauenly things eternall, and reasoneth by heauenly Lawes or by heauenly reason what is to be done, & what is

is not to bee done, and what things God commaundeth, and what he prohibiteth. And this higher part of reason hath no regard to transitory things or temporall things, but that sometime as it were by manner of counsell, she bringeth forth heavenly reasons to order well temporall things. The lower part of reason looketh most to governe well temporall things, and she groundeth her reasons much vpon laws of man, & vpon reason of man, whereby she coucludeth that that is to bee done, that is honest and expedient to the commonwealth, or not to bee done, that is not expedient to the Commonwealth. And so that reason whereby I know God and such things as pertaine to God, belongeth to the highest part of reason. And the reason whereby I know creatures, belongeth to the lower part of reason. And though these two parts, that is to say, the higher part & the lower part be one in deed & essence, yet they differ by reason of their working, and of their office, as it is of one selfe eye, that sometime looketh vpsward, and sometime downeward.

¶ Of Conscience:

Cap. 15.

This word Conscience, which in latine is called *coſcientia*, is compounded of this prepositiō *cū*, & is to say in English, with & of this *noſcōne ſcientia*, that is to say in English, knowledge, and so conscience is asmuch to say, as knowledge of one thing with another thing, & conscience so taken, is nothing els but

The 15. Chapter.

an applying of any sciēce or knowledg to some particular act of man. And so conscience may sometime erre, & sometime not erre. And of conscience thus takē, doctoꝝ make many descriptions, wherof one doctoꝝ saith, that conscience is the law of our vnderstanding. Another, that conscience is an habit of the mind discerning betwēne good & euill. Another, & conscience is the iudgement of reason, iudging on the particular acts of mā:al which sayings agree in one effect (that is to say) & conscience is an actuell applying of any cunning or knowledge to such things as be to be done, whereupon it followeth, that vpon the most perfit knowledge of any law or cunning, & of the most perfit & most true applying of the same to any particular act of man followeth & most perfit, & most pure, & the most best conscience. And if there be default in knowing of the trueth of such a law, or in the applying of & same to particular acts, the ther-vpon followeth an erroꝝ or default in cōscience, as it may appear by this exāple. Sinderesis mislistreth a vniuersall principle & neuer erreth, (that is to say) & an vnlawfull thing is not to be done. And the it might be taken by some mā that euery oath is vnlawful, because the Lord saith, Mat. 5. Ye shal in no wise sweare: and yet he & by reason of the said woꝝds will hold that it is not lawfull in no case to sweare erreth in conscience, for he hath not the perfit knowledge and vnderstanding of the truth of the said gospel, noꝝ he reduceth not the saying of scripture to other scriptures, in which it is granted that in some case an oath may be lawfull, & the cause
why

Why conscience may so erre in the said case, & in other like, is because conscience is formed of a certain proposition or question grounded particularly upon vniuersall rules ordained for such things as are to be done. And because a particular proposition is not knowne to himself, but must appeare & be searched by a diligent search of a reason, thei soze in search & in the conscience should be formed thereupon may happen to be erroz, & thereupon it is said that there is erroz in conscience: which erroz cometh either because he doth not assent to that he ought to assent vnto or else because his reason whereby he doth refer one thing to another, is deceived. For further declaratiō wherof it is to vnderstand that erroz in conscience cometh 7. manner of waies. First is through ignorance: & that is when man knoweth not what he ought to doe, and then he ought to aske counsell of the person he thinketh most expert in that sciēce, wherupon his doubt riseth. And if he can haue no counsell, then he must wholly commit him to God, & he of his goodnes will so order him, that he will save him from offence. The second is through negligēce, as when a man is negligent to search his owne conscience, or to enquire the trueth of other. The 3. is through pride, as when he wil not makeen himselfe, ne beleue them that be better & wiser than hee is. The fourth is through singularity, as when a man followeth his owne wit, and will not conforme himselfe to other, nor follow the good common wayes of men. The fift is through an inordinat affection to himselfe, whereby hee maketh conscience to follow his desire,

The 15. Chapter.

and so he causeth her go out of her right course. The 6. is through pusillanimitie, whereby some person dzeedeth oft times such things as of reason hee ought not to dzead. The 7. is through perplexity, & this is when a mā beleerueth himself to be so set betwixt two sins, that he thinketh it vnpossible, but that he shall fall into the one, but a mā can neuer be so perplexed in deed but through an error in conscience, & if he will put away that error he shall be deliuered: therefore I pray thee that thou wilt alwayes haue a good conscience, and if thou haue so, thou shalt alwayes be merry, & if thine own heart reprove thee not, thou shalt alwayes haue inward peace. The gladnes of righteous men is of God & in God, & their ioy is alwayes in truth and goodness. There be many diuersities of conscience, but there is none better than that, whereby a man truly knoweth himself. Many men know many great & high cunning things, & yet know not themselves, and truly he that knoweth not himselfe knoweth nothing well. Also he hath a good & cleane conscience, that hath puritie and cleanes in his heart, truth in his word, & righteousness in his deed. And as a light is set in a lantern that all that is in the house may be seen thereby, so almighty God hath set conscience in the midst of euery reasonable soule as a light whereby he may discern & know what he ought to do, & what he ought not to do. Therefore forasmuch as it behooueth thee to bee occupied in such things as pertain to the law: It is necessarie that thou ever hold a pure & cleane conscience, specially in such things as concern restitution:

tion : for the sin is not forgiven but if the thing that is wrongfully taken be restored. And I counsel thee also that thou love that is good & fly that is evil, & that thou doe to another as thou wouldest should be done to thee, & that thou doe nothing to other that thou wouldest not should be done to thee: That thou doe nothing against truth, that thou live peaceably with thy neighbor, and that thou do Justice to every man as much as in thee is. And also that in every general rule of the law, thou doe observe & keepe equitie : & if thou doe thus, I trust the light of the lanterne, that is thy conscience, shall never be extincted, &c. But I pray thee shew me what is that equitie that thou hast spoken of before & that thou wouldest that I should keepe. Do. I will with good will shew thee somewhat thereof.

¶ What is Equitie

Cap. 16.

Equitie is a rightwisenes that considereth all the particular circumstances of the deed, the which also is tempered with the sweetness of mercie. And such an equitie must also waies be observed in every law of man, & in every general rule thereof, & that knew he wel, that said thus, laws couet to be ruled by equitie. And the wise man saith, be not overmuch rightwise: for the extreme rightwisenes is extreme wrong, as who saith, if thou take al that the words of the law gieth thee, thou shalt sometime do against the law: & for the plainer declaration what equitie is, thou shalt understand,

The 16. Chapter.

that sith þe deeds & acts of men, for which lawes
bin ordained, happē in diuers maners infinitely
It is not possible to make any generall rule of
the law, but that it shal faile in some case & there-
fore makers of lawes take heed to such things
as may often come, & not to every particuler
case, for they could not though they would. And
therfore to folloiw the wordes of the law were in
some case both against iustice & þe cōmon welth.
Wherefore in some cases it is necessary to leane
the wordes of the law, & to folloiw that reason &
iustice requireth, & to that intent equity is or-
dained: that is to say, to temper & mitigate the
rigor of the Law. And it is called also by some
men Epicaia, the which is no other thing but
an exception of the law of God or of the law of
reason frō the general rules of the law of man,
when they by reason of their generality would
in any particuler case iudge against the law of
God, or the law of reason, the which exception
is secretly vnderstood in every general rule of
every positue law. And so it appeareth that e-
quity taketh not away the verie right, but only
that that seemeth to bee right by the generall
wordes of the law: nor it is not ordained against
the cruelnes of the law, for the law in such case
generally taken is good in himselfe, but equity
folloiweth the law in all particuler cases where
right and Justice requireth, notwithstanding
the generall rule of the law be to the contrary:
wherefore it appeareth that if any law were
made by a mā without any such exceptiō expre-
sed or implied, it were manifestly vnreasonable
& were not to be suffered: for such cases might

come that he that would obserue the law should
 break both the law of God, & the law of reason.
 As if a man make a vow that he wil neuer eat
 whitenicat, and after it happeneth him to come
 there where he can get no other meat. In this
 case it becometh him to break his auow, for the
 particular case is excepted secretly frō his ge-
 nerall auow by his equitie or Epicay, as it is
 said before. Also if a law were made in a citie,
 that no man vnder the paine of death should o-
 pen the gates of the citie before the Sunne ri-
 sing: yet if the citizens before that houre flying
 from their enemies come to the gates of the ci-
 tie, & one for sauing of the citizens openeth the
 gates before the houre appointed by the law, yet
 he offendeth not the law, for that case is excep-
 ted from the said generall law by equitie, as is
 said before: & so it appeareth that equity rather
 followeth the intent of the law, thā the words
 of the law. And I suppose that there be in like-
 wise like equities grounded vpon the general
 rules of the law of the realm. So verily, wher-
 of one is this, there is a generall prohibition in
 the laws of Engiād, that it shal not be lawfull
 to any mā to enter into the freehold of another
 without authoritie of the owner or the Law:
 but yet it is excepted frō the said prohibitio by
 the law of reason, that if a man dring beasts by
 the high way, & the beasts happen to escape in-
 to the cozne of his neighbour, & he to bring out
 his beasts that they should doe no hurt, goeth
 into the ground, & fetteth out his beasts, there
 he shall iustifie that entrie into the ground by
 the Law. Also notwithstanding the Statute

The 16. Chapter.

of Ed. 3. made the 14. yere of his raigne, wherby it is ordained, that no man vpon pain of imprisonment should giue any almes to any valiant begger, that is well able to labour: yet if a man meete with a valiant begger in so cold a weather and so light apparrell, & if he haue no clothes he shal not be able to come to any town to haue succour, but is likely rather to dye by the way, & he therefore giueth him apparrell to save his life, he shall be excused by the said statute, by such an exception of the law of reason as I haue spoken of. Do. I know well that as thou saist he shal be excepted of the said statute by conscience, &ouer that, & he shall haue great reward of God for his good deed, but I would wot whether the party shal be so discharged in the comon law, by such an exception of the law of reason, or not, for though ignorance vnumbrable of a statute excuse the party against God, yet (as I haue heard) it excuseth not in the lawes of the realme, ne yet Chancery, as some say, although the case bee so that the party to whom the forfeiture is giuen may not with conscience leaue it. So Merely, by thy question thou hast put me in a great doubt, wherfore I pray thee giue me a respite therein to make thee an answer, but as I suppose for & time (howbeit I will not fallie affirme it to bee as I say) it should seeme that hee should well plead it for his discharge at the common Law, because it shall be taken that it was the intent of the makers of the statute to except such cases. And Judges may many times iudge after the mind of the makers as farre as the letter may suffer and

and so it seemeth they may in this case. And diuers other exceptions there be also from other grounds of the Law of the realme by such equitie, as thou hast remembred before, that were too long to rehearse now. Do. But yet I pray thee shew me shortly somewhat more of thy mind vnder what manner a man may be holpen in this realme by such equitie. St. I will with good will shew thee somewhat therein.

¶ In what manner a man shall be holpen by equitie in the Laws of England.

Cap. 17.

First it is to be vnderstood, there bee in many cases diuers exceptions frō the general grounds of the law of the Realme by other reasonable grounds of the same law, whereby a man shall be holpen in the common law. As it is of this general ground, that it is not lawfull for any man to enter vpon a Descent, yet the reasonableness of the Law excepteth from the ground, an infant that hath right, and hath suffered such a Descent, & him also that maketh continuall claime, and suffereth them to enter, notwithstanding h̄ descent. And of that exception they shal haue aduantage in h̄ cōmon law. And so it is likewise of diuers Statutes, as of the statute whereby it is prohibited, h̄ certaine particular tenants shal do no wast, yet if a lease for terme of yerres be made to an infant that is within yerres of discretion, as of the age of 14. or 15. yerres, & a stranger do wast, in this case this

in.

The 17. Chapter.

Infant shall not be punished for the waste, for he is excepted & excused by the law of reason. And a woman covert to whom such a lease is made after the coverture, shall bee also discharged of waste after her husbands death, by a reasonable maxime and custome of the realm. And also for reparations to be made upon the same ground it is lawfull for such particular tenants to cut down trees upon the same ground to make reparations. But the cause there as I suppose is, for that the mind of the makers of the said statute, shalbe take to be, that that case should be excepted. And in all these cases the parties shalbe holpe in the same court, & by the common law: & thus it appeareth that sometime a man may be excepted from the rigor of a maxime of the law by another maxime of the Law. And sometime from the rigor of a statute by the law of reason, & sometime by the intent of the makers of the stat. but yet it is to bee understood that most commonly, where any thing is excepted from the generall customs or Maximes of the lawes of the Realme by the law of reason, the party must haue his remedy by a writ that is called Subpena, if a Subpena lye in the case: But where a Subpena lye, & where not, it is not our intent to treat of at this time. And in some case there is no remedy for such an equity by way of compassion, but all remedie therein must be committed to the conscience of the party. Doct. But in case where a Subpena lye, to whom shall it be directed, whether to the Judge, or the party. St. It shall neuer be directed to the Judge, but to the party plaintife or to his Attorney,

tourney, and thereupon an Iniunction commanding them by the same vnder a certaine paine therein to be contained, that he proceed no further at the common Law, till it be determined in the Kings Chancerie, whether the plaintife hath title in conscience to recouer, or not. And when the plaintife by reason of such an Iniunction ceaseth to aske any further processe. The Iudges will in likewise cease to make any further processe in that behalfe.

Do. Is there any mention made in the law of England of any such equities. *Ser.* Of this terme equitie, to the intent that is spoken of heere, there is no mention made in the Law of England, but of an Equity deriued vpon certaine statutes, mention is made many times & often in the Law of England: But that equity is all of another effect thā this. But of the effect of this Equity that we now speake of, mention is made many times: for it is oftentimes argued in the Law of England, where a Subpena lyeth, and where not, and daily Wills bee made by men learned in the Lawe of this Realme, to haue Subpenas. And it is not prohibited by the Law, but that they may well doe it, so that they make them not, but in case where they ought to be made, and not for vexation of the partie, but according to the truth of the matter. And the Law will in many cases that there shall be such remedie in the Chancerie vpon diuers things grounded vpon such Equities, and then the Lord Chancellour must order his conscience after the rules and grounds of the Law of the realme.

The 18. Chapter.

in somuch that it had not bene incommenient to
have assigned such remedie in the Chancerie
vpon such equities for the seventh ground of the
Law of England: but forasmuch as no record
remaineth in the kings Court of no such Bill,
ne of the writ of Subpena or Iniunction, that is
sued thereupon, therfore it is not set as for a
speciall ground of the law, but as a thing that
is suffered by the law. D. Then sith the parties
ought of right in many cases to bee holpen in
the Chancerie vpon such equities: it seemeth
that if it were ordained by Statute, that there
should be no remedie vpon such equities in the
Chancerie, nor in none other place, but that
everie matter should bee ordered onely by the
rules and grounds of the common Law, that
the Statute were against right & conscience.
Sr. I thinke the same, but I suppose there is no
such Statute. Do. There is a Statute of that ef-
fect, as I have heard say, wherein I would
gladly heare thy opinion. Sr. Shew me that
Statute and I shall with good will say as me
thinketh therein.

¶ Whether the Statute hereafter rehearsed by
the Doctor, be against conscience.
or not.

Cap. 18.

There is a Stat. made in the 4. yere of R.
H. 4. c. 22. whereby it is enacted that iudg-
ment given by the Kings courts, shall
not be examined in the Chancery, Parliament,
nor

nor elsewhere, by which Statute it appeareth that if any Iudgement bee given in the Kings courts against an equity or against any matter of conscience, that there can be had no remedie by that equity, for the iudgement cannot be reformed without examination, and the examination is by the said Statute prohibited, wherefore it seemeth that the said Statute is against conscience: what is thine opinion therein?

Sc. If iudgement given in the Kings courts should be examined in the Chancery before the Kings Councell, or any other place, the plain- tiffes or demaundants should seldome come to the effect of their suit, ne the law shou'd neuer have end. And therefore to eschew that incon- venience that Statute was made. And though peradventure by reason of that Stat. some sin- gular person may happen to have losse: Never- thelesse the said Statute is verie necessarie, to eschew many great vexations and vniust ex- pences, that would else come to many plain- tiffes that haue rightwisely recovered in the Kings Courts. And it is much more provided for in the law of England that hurt nor dama- ges should not come to many, than only to one. And also the said Statute doth not prohibit equi- tie, but it prohibiteth onely the examination of the iudgement for the eschewing of the incon- venience before rehearsed. And it seemeth that the said Statute standeth with good conscience: & in many other cases where a man doth wrong yet he shal not be compelled by way of compulsi- on to reforme it, for many times it must be left to the conscience of the party, whether he will re-
dresse

The 18. Chapter.

redresse it or not. And in such case hee is in conscience aswell bound to redresse it if he wil save his soule, as hee were if hee were compellable thereto by the law, as it may appeare in diuers cases that may bee put vpon the same ground. Doct. I pray thee put some of these cases for an example. **S**eu If the defendant swage his law in an action of debt brought vpon a true debt, the plaintife hath no meanes to come to his debt by way of compulsion, neither by Sub pena, nor otherwise, & yet the defendant is bound in conscience to pay him. Also if the grand Iurie in attaint affirme a false verdict given by the petty Iurie, there is no further remedie but the Conscience of the partie. Also where there can bee had no sufficient prooffe, there can bee no remedie in the Chancerie, no moze than there may bee in the spirituall Court. And because thou hast giuen an occasion to speake of conscience I would gladly heare thy opinion where conscience shall be ruled after the law, & where the law shall be ruled after conscience. D. And of that matter I would likewise gladly heare thy opinion, specially in cases grounded vpon the lawes of England, for I haue not heard but little thereof in time past: but befoze thou put any case thereof, I would that thou wouldest shew me how these two questions after thy opinion are to be vnderstood.

¶ Of what Law this question is to bee vnderstood: that is to say, where conscience shall be ruled after the Law.

Cap. 19.

The

The law wherof mention is made in this question, that is to say, where conscience shal be ruled by the law, is not as we seemeth to be understood only of the law of reason, & of the law of God, but also of the law of mā, & is not contrarie to the law of Reason, nor the law of God, but that it is superadded unto the for the better ordering of the commonwealth: for such a law of man is alwayes to be set as a rule in conscience, so that it is not lawfull for a man to farme it on the one side, ne on thother, for such a law of man hath not only the strength of mans law, but also the Law of Reason, or of the Law of God, whereof it is deriued: for Lawes made by man, which haue receined of God power to make Lawes, be made by God. And therfore conscience must be ordred by the law, as it must be vpon the law of God, & vpon the law of reason. And furthermore the Law wherof mention is made in the later end of the Chapter next before, that is to say, in the question wherein it is asked where the law is to be left & forsaken for conscience, is not to be understood of the law of reason, nor of the law of God: for the two lawes may not be left, nor it is not to be understood of the law of man, that is made in particular cases, and that is consonant to the law of reason, & to the law of God, and that yet that law should bee left for conscience: for of such a law made by man, conscience must be ruled, as it is said before: nor it is not to be understood of a law made by mā commanding or prohibiting any thing to bee done that is against the law of reason, or the law of God.

For

The 19. Chapter.

For if any law made by him, bind any person to any thing that is against the said laws, it is no law, but a corruption and manifest error. Therefore after them that be learned in the laws of England, the said question, that is to say, where the law is to be left for conscience, and where not, it is to be understood in divers manners, and after divers rules, as hereafter shall somewhat be touched.

First, many unlearned persons believe that it is lawful for them to do with good conscience all things, which if they do them, they shall not be punished therefore by the Law, though the law doth not warrant them to do that they do, but onely when it is done, doth not for some reasonable consideration punish the that doth it, but leaveth it onely to his conscience. And therefore many persons doe oft times that they should not do, and keep as their owne that that in conscience they ought to restore. Wherefore there is the law of England in this case.

If two men have a wood jointly, & the one of them selleth the wood, and keepeth all the money wholly to himselfe: In this case his fellow shall have no remedy against him by law; for as they when they took the wood jointly, put each other in trust, and were content to occupy together: so the Law suffereth them to order the profits thereof according to the trust that each of them put thother in. And yet if one take all the profits, hee is bound in conscience to restore the halfe to his fellow, for, as the Law giveth him right only to halfe the land, so it giveth him right onely in conscience

science to the halfe profits. And yet neuertheless it cannot bee said in that case, that the law is against conscience, for the law neither willett ne commandeth that one should take all the profits, but leaueth it to theire conscience: so that no default can be found in the law, but in him that taketh all the profits to himselfe may bee assigned default, which is bound in conscience to refozme it, if he wil saue his soule, though he cannot be compelled thereto by the law. And therefore in this case & other like, that opinion which some haue, that they may do with conscience, all that they shall not bee punished for by the law if they doe it, it is to bee left for conscience: but the Law is not to bee left for conscience.

Also many men think that if a man haue land that another hath title to, if he hath the right shall not by the action that is giuen him by the law to recouer his right by, recouer damages, that then hee that hath the land is also discharged of damages in conscience, & that is a great error in conscience: for though he cannot be compelled to pay the damages by no mans Law, yet hee is compelled thereto by the law of reason, & by the law of God, whereby we be bound to doe as wee would bee done to, and that wee should not couet our neighbors goods: & therefore if tenant in taile be disseised and the disseisor dyeth seised, and then the heire in the taile bringeth a Formedon & recouereth the land & no damages, for the law giueth him no damage in that case, yet the tenant by conscience is bound to pay damages to the heire in taile from the

¶

death

The 19. Chapter.

death of his auncestoz. Also it is taken by some men, that the law must bee left for conscience, where the law doth not suffer a man to denie that he hath before affirmed in Court of Record, or for that he hath wilfully excluded himself there-
 o for some other cause: as if the daughter that is only heire to her father, will sue livery with her sister that is a bastard, in that case she shall not after be receiued to say, that her sister is a bastard, in so much that if her sister take halfe the land with her, there is no remedie against her by the law. And no more there is of diuersitie in other estopples, which were too long to rehearse now. And yet the party that may take aduantage by such an estopple by the law is bound in conscience to forsake that aduantage, specially if hee were so estopped by ignorance, & not by his owne knowledge & assent. For though the law in such cases giueth no remedy to him that is estopped, yet the law iudgeth not that the other hath right vnto the thing that is in variance betwixt them. And it is to be vnderstood that the law is to be left for conscience, where a thing is tried and found by verdict against the truth, for in the common law the iudgement must bee giuen according as it is pleaded and tried, like as it is in other laws, that the iudgement must be giuen according to that, that is pleaded and proued. And it is to be vnderstood that the law is to be left for conscience, where the cause of the law doth cease, for when the cause of the Law doth cease, the Law also doth cease in conscience, as appeareth by this case hereafter following.

A man maketh a lease for term of life, & after a stranger doth wast, wherefoze the lessee bringeth an action of Trespas, & hath iudgement to recouer damages, hauing regard to the treble damages that he shall yeeld to him in the reuerfion. And after he in the reuerfion befoze action of wast sued, dieth, so that the action of wast is thereby extinted: then the tenant for terme of life (though hee may sue execution of the sayd iudgement by the law) yet he may not doe it by conscience, for in conscience hee may take no moze thā he is hurted by the sayd Trespas, because he is not charged ouer with treble damages to his lessoz. Also it is to be vnderstood where a law is grounded vpon a presumption, if the presumption be vnttrue, then the Law is not to be holden in conscience. And now I haue shewed thee somewhat of the question, that is to say, where the law shalbe ruled after conscience, I pray thee shew mee whether there be not like diuersities in other laws, betwixt law & conscience. D. Yes verily, very many, wherof thou hast recited one befoze, where a thing that is vnttrue is pleaded, and proued, in which case iudgement must be giuen according, as well in the law Ciuill, as in law Cannon. And an other case is, that if the hette make not his Inventoz, he shall bee bound after the law Ciuill to all the debts, though the goods amount not to so much: And the law Cannon is not against that Law, and yet in conscience the heyze which in the Lawes of England is called an Executour is not in that case charged to the debts, but according to the value of the goods.

The 20. Chapter.

And now I pray thee shew mee some cases
where conscience shall be ruled after the Law,
St. I will with good will shew thee somewhat
as me thinketh therein.

¶ Here follow diuers cases, where conscience
is to be ordered after the Law.

Cap. 20.

The eldest sonne shall haue & enioy his fa-
thers lands at the common law in consci-
ence, as he shall in the law. And in Burgh-
english the younger sonne shall enioy the inheri-
tance, & that in conscience. And in Gavelkind
all the soones shall inherit the land together as
daughters, at the comon law & that in consciēce
And there can be none other cause assigned why
cōscience in the first case is with the eldest bzo-
ther, & in the second with the younger brother, &
in the 3. case with all the bzethzen, but because
the law of England by reaso of diuers customs
 hath sometime giue the land wholly to the eldest
sonne, sometime to the pongest, & sometime to all.
Also if a man of his meere motion make a freh
femēt of two acres of lād lying in two seuerall
hires, & maketh livery of seisin in the one acre
in the name of both. In this case the lessee
hath right but onely in the acre whereto liwerie
of seisin was made, because hee hath no title
by the Law: but if both acres had bin in one
shire he had had good right to both. And in these
cases the diuersitie of the law maketh the di-
uersity of conscience.

Also, if a mā of his meir motiō make a felle-
ment of a Mannor, & laith not, to haue & to hold
ec. with the appurtenances, in that case the fel-
lō hath right to the demelne Lands, and to the
rents, if there be atturhements, & to the commō
pertaining to the Mannor, but hee hath nei-
ther right to the aduocōs appendāt, if any be,
nor to the villeines regardant: but if this term,
with thappurtenances, had bin in the deed, the
felloe had right in conscience aswell to the ad-
uocōsons and villeines, as to the residue of the
Mannor: but if the king of his meir motiō giue
a Mannor with thappurtenances, yet the donee
hath neither right in law nor conscience to the
aduocōsons nor villeines. And the diuersitie of
the Law in these cases make the diuersitie of
conscience.

Also, if a man make a lease for terme of yeres
peyding to him & to his heirs a certain rēt by-
on condition, that if the rent bee behind by xl.
daies ec. that then it shalbe lawfull to the lessor
& his heires to reenter. And after the rent is be-
hind, the lessor asketh the rent according to the
law, & it is not payed, the lessor dieth, his heire
entreteth. In this case his entrie is lawfull both
in law and conscience: but if the lessor had died
befoze he had demanded the rent, and his heire
demanded the rent, & because it is not payed he
reentreteth, in that case his reentrie is not law-
full neither in law nor conscience.

Also, if the tenāt in bowser sow herland & dy
befoze the cozne is ripe, the cozne in conscience
belongeth to her executors, & not to him in the
reuerſion: but otherwise it is in conscience of

The 20. Chapter.

grasse and fruits. And the diuersitie of the law maketh there also the diuersitie in conscience.

Also, if a man seised of lands in his demesne as of fee, bequeath the same by his last will to another, & to his heires, & dieth: In this case heire notwithstanding the will, hath right to the land in conscience. And the reason is because the law iudgeth that will to be void, & as it is void in the law, so it is void in conscience.

Also, if a man grant a rent for terme of life, & make a lease of land to the same grante for terme of life, & the tenant alieneth both in fee: In this case hee in the reuerfion hath good title to the land both in law and conscience, and not to the rent. And the reason is, because the land by the Alienation is forleite by the law to him in the reuerfion, and not the rent.

Also, if lands be giuen to two men and to a woman in fee, & after one of the men entermarrieth with the woman, and alieneth the land byeth: In this case the woman hath right but onely to the third part, but if the man & the woman had bene married together, before the first feoffement, then the woman notwithstanding the alienation of her husband, should haue had right in law & conscience to the one halfe of the land. And so in these two cases conscience doth folloiw the Law of the Realme. Also if a man haue two sonnes, one before espousels, and another after espousels, and after the father dieth seised of certain lands: In this case the yonger sonne shall enioy the lands in this Realme, as heire to his father both in law and conscience. And the cause is, because that some bozne after

espon-

espousels, is by the law of this realme the be-
 ric heire, and the elber son is a bastard. And of
 these cases and many other like in the lawes of
 England may be formed the Silogisme of con-
 science, or the true iudgement of conscience in
 this maner. Sinderisks ministreth the Major
 thus: rightwisenes is to be done to euery mā,
 vpon which Major the Law of England mi-
 nistreth the Minor thus: The inheritance be-
 longeth to the son bozne after espousels, & not
 the son bozne befoze espousels, then conscience
 maketh the conclusion, & saith, therfoze the in-
 heritance is in conscience to be giuen to the son
 bozne after espousels. And so in other cases in-
 finit may be formed by the law of the Silogisme
 or the right iudgement of conscience: wherfoze
 they that be learned in the law of the realme, say
 that in euery case, where any law is ordained
 for disposition of lands & goods, which is not
 against the law of God, nor yet against the law
 of reason, that the law bindeth all them that be
 vnder the law of the Court of conscience, that
 is to say, inwardly in his soule. And therfoze
 it is somewhat to maruaile that spirituall men
 haue not indured themselves in time past to
 haue more knowledge of the kings lawes than
 they haue done, or that they yet doe: for by the
 ignorance thereof they be oft times ignorant of
 that that should order them according to right
 and iustice, as well concerning themselves as
 other that come to them for Counsaile. And
 now for as much as I haue answered to
 thy questions as well as I can: I pray thee
 that thou wilt shew mee thy opinion in diuers

The 21. Chapter.

cases formed upon the law of England where-
in I am in doubt, what is to bee holden therein
in conscience. Do. Shew me thy questions, & I
will say as me thinketh therein.

¶ The first question of the Student.

Cap. 21.

If any infant that is of the age of xx. yeares, &
hath reason & wisdom to governe himselfe
selleth his land, & with the mony thereof buy-
eth other Land of greater value than the first
was, and taketh the profits thereof, whether
may the infant aske his first land againe in con-
science, as he may by the law. D. What thinkest
thou in that question? S. It seemeth that for-
asmuch as the Law of England in this article
is grounded upon a presumption, that is to say,
that infants commonly afore they be of the age
of xx. yeares be not able to govern themselves,
that yet for as much as that presumption say-
eth in this infant, that hee may not in this case
with conscience aske the Land againe that hee
hath sold to his great advantage, as before ap-
peareth. D. Is not this sale of the infāt and the
seffement made thereupon, if any were, voidable
in the law? S. Yes verely. Do. And if the feof-
fee have no right by the bargaine, nor by the
seffement made thereupon, wherby should hee
then have right thereto as thou thinkest? S. By
conscience as me thinketh, for the reason that
I have made before. D. And upon what Law
should that conscience be grounded, that thou
speaks

speakest of, for it cannot be granted by the law
 of the Realme, as thou hast said thy selfe. And
 mee thinketh that it cannot be grounded vpon
 the Law of God, nor vpon the Law of reason,
 for feoffements nor contracts be not grounded
 vpon neither of these laws, but vpon the law
 of man. So After the law of proprietie was or-
 dained, the people might not conveniently liue
 together without contracts, & therefore it see-
 meth that contracts be grounded vpon the Law
 of reason, or at the least, vpon the law that is
 called *Ius gentium*. Do. Though contracts bee
 grounded vpon the Law that is called *Ius*
gentium, because they be so necessarie & so ge-
 nerrall among all people, yet that psoneth not
 that contracts be grounded vpon the Law of
 reason: for though the law called *Ius gentium*
 bee much necessarie for the people, yet it may be
 changed. And therefore if it were ordained by
 statute that there should bee no sale of land, or
 no contract of goods, and if any were, that it
 should be void, so that euerie man should con-
 tinue still seised of his landes and possessed of
 his goods, the statute were good. And then if
 a man against that statute sold his Land for a
 somme of money, yet the seller might lawfully
 retaine his Land according to the statute. And
 then he were bound to no more but to repay the
 money that he receiued with reasonable expen-
 ses in that behalfe. And so in likewise me thin-
 keth that in this case the infant may with good
 conscience reenter into his first land: because
 the contract after the *Maximes* of the law of
 the Realme is void, for as I haue heard the
Maximes

The 22. Chapter.

Maxims of the law be of as great strength in the Law as statutes. And some thinke that in this case the Infant is bound to no more, but only to repay the money to him that he sold his land unto, with such reasonable costes & charges as he hath sustained by reason of the same. But if a man sell his lād by a sufficient & lawful contract, though there lack lierie of seisin or such other solemnities of the Law, yet the seller is bound in conscience to performe the contract. But in this case the contract is insufficient, and so we thinke great diuersitie betwixt the cases. Stu. For this time I hold mee contented with thy opinion.

¶ The second question of the Student.

Cap. 22.

If a man that hath lands for terme of life, bee imponelled vpon an Inquest, & thereupō leueth issues & dieth, whether may those issues be leued vpon him in the reuerſiō in conscience as they may be by the law? D. If they may be leued by the law, what is the cause why thou doest doubt whether they may be leued by conscience? S. For there is a Maxime in the lawes of England, that where two Titles run together, the eldest Title shall bee preferred And in this case the title of him in the reuerſiō, is before the title of the forfeiture of the issues And therefore I doubt somewhat whether they may be lawfully leued. Do. By that reason it seemeth thou art in doubt what the law is in this case,

case, but that must necessarily bee knowne, for
 else it were in vaine to argue what conscience
 will therein. It is certain that the law is such,
 & so it is likewise if the husband forfeit issues,
 and die, those issues shall be leited on the lands
 of the wife. D. And if the law be such, it seemeth
 that conscience is so in likewise, for sith it is
 the law, that for execution of iustice euery man
 shall be impanelled when need requireth, it see-
 meth reasonable, that if he will not appeare, that
 he should haue some punishment for his not ap-
 parance, for else the law should be cleerely fru-
 strate in that point. And the paines, as I haue
 heard, is, that he shall lose issues to the king for
 his not apparance: Wherefore it seemeth not
 incontinent nor against conscience, though the
 law be, that those issues shall be leited of him in
 the reuerſion, for that the condition was secret-
 ly vnderstood in the law, to passe with the lease
 when the lease was made. And therefore it is
 for the lessor to beware & to prevent the danger
 at the making of the lease, or els it shall bee ad-
 iudged his owne default. And then this particu-
 lar Maxime whereby such issues shall bee le-
 uied vpon him in the reuerſion, is a particuler
 exception in the law of England from the ge-
 nerall Maxime that thou hast remembred be-
 fore, that is to say, & where two titles run to-
 gether, that the eldest title shall be preferred, & so
 in this case the generall Maxime in this point
 shall hold no place, neither in law, nor in consci-
 ence, for by this particuler Maxime the strength
 of the general Maxime is restrained to euery in-
 tent, & is to say, as well in law as in conscience.

The

The 23. Chapter.

¶ The third question of the Student.

Cap 23.

If a Tenant for terme of life, or for terme of
yeres, do wast, whereby they be bound by the
lawes to yeeld to him in the reuerſion treble
damages, & so shall for. the place wasted whe-
ther is hee also bound in conscience to pay those
damages, & to rest, or that place wasted imme-
diatly after the wast done, as he is in the single
damages, or that he is not bound thereto till
the treble damages, & place wasted, bee recone-
red in the kings Court. **Uo.** Before iudgement
giuen, in the treble damages & of the place was-
ted, he is not bound in conscience to pay them,
for it is uncerteins what he should pay: But it
sufficeth that he bee ready till iudgement be gi-
uen to yeeld damages according to the value of
the wast, but after the iudgement giuen, hee is
bound in conscience to yeeld the treble damma-
ges, & also the place wasted. And the same law
is in all statutes Penal, that is to say, that no
man is bound in conscience to pay the penaltie
till it be recovered by the law. **S.** Whether may
he that hath offered against such a statute pe-
nal, defend the action & hinder the iudgement,
to the intent hee would not pay the penaltie,
but onely single damages. **D.** If the action bee
taken rightwisely according to the Statute,
and vpon a iust cause, the defendant may in no
wise defend the action, vniſſe hee haue a true
dilatorie matter to plead, which should bee
hurtfull to him if he pleaded not, though he bee
not

not bound to pay the penalitie till it bee recovered,

The fourth question of the
Student.

Cap. 24.

If a man enfeoffe other in certaine land vpon condition, that if he enfeoffe any other, that it shalbe lawfull for the feoffor & his heirs to re-enter, &c. Whether is this condition good in conscience, though it bee void in the law? D. What is the cause why this condition is void in the law? St. The cause is this, by the law it is incident to every state of fee simple, that hee hath the estate, may lawfully by the law, and by the gift of the feoffor, make a feoffment thereof: And then when the feoffor restraineth him after, that hee shall make no feoffment to no man against his owne former grant, & also against the puritie of the state of a fee simple, the Law iudgeth the condition to be void, but if the condition had beene, that he should not haue enfeoffed such a man, or such a man, that condition had bin good, for yet he might enfeoffe other.

D. Though the said condition be against the effect of the state of a fee simple, & also against the law: neuertheless it is not against the intent that the parties agreed vpon, & that at the time of the livery And soasmuch as the intent of the parties was, & if the feoffee infefted any man of the land, that the feoffour should enter, and to that intent the feoffor take the state and after

The 24. Chapter.

after make the intent, it seemeth that the lād in conscience should returne to the feoffor. S. The intent of the parties in the lawes of England is void in many cases, that is to say, if he be not ordred according to the law And if a mā of his meere motion without any recompence, intending to giue lands to another, & to his heires make a deed vnto him, whereby he giueth him these lands, to haue and to hold to him for euer, intending that by the word (for euer) the lessee should haue the land to him and to his heires, in this case his intent is voyd, and the other shall haue the land onely for terme of life. Also if a man giue lands to another, & to his heires for terme of xx. yeares, intending, that if the lessee dye within the terme, that the his heires should enioy the land during the terme: In this case his intent is void, for by the law of the Realm all chattels real & personal shal go to the executor, & not to the heir. Also if a man giue lands to a man and to his wife, & to the third person, intending that euery of them should take the third part of the land as three cōmon persons should, his intent is voyd, for the husband and the wife, as one person in the law, shal take onely the one halfe, & the third persō the other halfe: but these cases be alway to be vnderstood wher the said estates bee made without any recompence. And forasmuch as in this principal case the intent of the feoffour is grounded against the Law, and that there is no recompence appointed for the feoffement. mee thinketh that the feoffor hath neither right to the Land by Law or conscience: for if hee should haue it by

con:

conscience, that conscience should bee grounded vpon the law of reason, and that it cannot, for conditions bee not grounded vpon the Law of reason, but vpon the maxims & customs of the realme: & therefore it might be ordained by statute that all conditions made vpon land should be void. And when a condition is void by the Maxims of the Law, it is as fully void to euery intent, as if it were made void by Statute, and so me thinketh that in this case the feoffor hath no right to the land in law nor in conscience. D. I am content thy opinion stand till we shall haue hereafter a better leasure to speake farther in this matter.

¶ The fift question of the
Student.

Cap. 25.

If a fine with proclamation bee leued according to the statute, & no claime made within v. peres ac whether is the right of a stranger extincted thereby in conscience, as it is in the law? Do. Upon what consideration was that statute made? Stu. That the right of lands and tenements might be the moze certainly known, and not to bee so vncertaine as they were before that statute. D. And when any law of man is made for a Common wealth, or for a good peace and quietnesse of the people, or for any incontinencie or hurt to be saued from the, that law is good, though percase it exting the right of a stranger, and must be kept in the Court of
con;

The 25. Chapter.

conscience: for as it is said before in Ch 4. By
 lawes rightwisely made by man, it appeareth
 who hath right to the lands & goods, for what-
 soeuer a man hath by such a Law hee hath it
 rightwisely. And whatsoeuer hee holdeth a-
 gainst such a law he holdeth vnrightwisely: and
 furthermore, it is said there, all the lawes made
 by man which bee not contrarie to the Law of
 God must be obserued and kept, & that in con-
 science. And he that despiseth the despiseth God,
 and he that resisteth th. m, resisteth God. Also
 it is to be vnderstood, that possessions and the
 right thereof is subiect to the lawes, so that they
 therfore with a cause reasonable may be tran-
 slated and altered from one man to another, by
 the act of the Law. And of this consideration
 that Law is groundes, that by a contract made
 in faires and markets, the proprietie is altered
 except the proprietie be to the King, so that the
 buyer pay toll, or do such other things as is ac-
 customed there to be done vpon such contracts,
 and that the buyer knoweth not the former
 proprietie. And in the law Civil there is a like
 Law, that if a man haue another mans goods
 with a title three yeares, thinking that he hath
 right to it, he hath the very right vnto the thing
 and that was made for a law, to the intent that
 the proprietie and right of things should not be
 vncertaine, and that variance and strife should
 not bee among the people. And forasmuch as
 the said Statute was ordained to giue a cer-
 taintie of title in the Lands and Tenements
 comprised in the fine: It seemeth that that
 fine extinguisht the title of all other, as we'll in
 con-

conscience as it doth in the Law. And sith I have answered to thy question, I pray thee let me know thy mind in one question concerning tailed lands, and then I will trouble thee no further at this time.

¶ A question made by the Doctor, how certaine recoveries that be vsed in the Kings Courts to defeate tailed land, may stand with conscience.

Cap. 26.

I have heard say, & when a man that is seised of lands in the taile, selleth the land. That it is commonly vsed, that he that buyeth the land, shall for his suretie, and for the auoiding of the Taile in that behalfe, cause some of his friends to recover the said lands against the said tenant in taile: which recovery, as I have bene credibly enforzmed, shalbe had in this manner: the Demaundants shall suppose in their writ & declaration, that the tenant hath no entry, but by such a stranger as the buyer shal list to name & appoint, where indeed the Demaundants neuer had possession thereof, nor yet the said stranger. And thereupon the said tenant in taile shall appeare in the court, and by assent of & parties, shall vouch to warrant one that he knoweth well hath nothing to yeeld in value. And the vouchee shall appeare, & the Demaundants shall declare against him, and thereupon he shall take a day to compare at the same terme, and at that day by assent and counyn of the parties, he

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The 26. Chapter.

shall make default, vpon which default because it is a default in despite of the Court, the demandants shall haue iudgement to recover against the tenāt in taile, and he ouer in value against the vouchee, and this iudgement and recoverye in value, is taken for a bar of the taile for euer: how may it therefore be taken, that þe law standeth with conscience, that as it seemeth alloweth a fauoureth such fained recoveries? Sr. If the tenant in taile sell the land for a certaine summe of mony as is agreed betwixt the at such a price as is commonly vled of other lands, and for the suretie of the sale suffereth such a recoverye as is aforesaid, what is the cause that mouneth thee to doubt whether the said contract, or þe recovery made thereupon, for the suretie of the buyer that hath truly payed his money for the same, should stand with conscience? Do. Two things cause mee to doubt therein, one is for that, that after our Lord had giuen the land of Behest to Abraham and to his seede, that is to say, to his children in possession alway to continue, he said to Moses, as it appeareth Levit. 25. the land shall not bee sold for euer, for it is mine. And then our Lord assigned a certain maner how the land might be redeemed in the yeare of Iubilie if it were sold before: and soasmuch as our Lord would that the Land so giuen to Abraham and his children should not be sold for euer, it seemeth that he doth against the ensample of God, that alieneth or selleth the land that is giuen to him and to his children, as lands intailed be giuen. Another cause is this: It appeareth by the
com

commandement of God, that thou shalt not
 couet the house of thy neighbour &c. And if
 that concupiscence be prohibited, moze stronger
 then the vnlawfull taking and withholding
 thereof is prohibited: and soasmuch as tailed
 Land, when the stinceffoz is dead, is a thing
 that of right is belonging to his heire, for
 that hee is heire according to the gift, how may
 the land with right or conscience be holden frō
 him?

S. Notwithstanding the prohibition of Al-
 mightie God, whereby the Land that was
 giuen to Abraham & to his seed might not be a-
 liened for euer, yet lāds within walled townes
 might lawfully bee aliened for euer, except the
 Lands of the Leuites, as appeareth in the
 said Chapter of Leuitic. 25. And so it appea-
 reth that the said Prohibition was not gene-
 rall for euery place, and that among the Iewes.
 And it appeareth also that it was giuen onely
 to Abraham and his children, and so it was
 not generally to all people. And it appeareth
 also that it extended not but onely to the Land
 of promise, as it appeareth by the wordes
 of the sayd Chapter, where it is said thus all
 the region of our possession shall bee sold vn-
 der the condition of redeeming: whereby ap-
 peareth that Lands in other Countries bee
 not bound to that condition, and as they be
 not bound to that condition, by the same rea-
 son it folloiweth, that they bee not bound to the
 same succession. Therefore that sayd Law,
 that will that the Land giuen to Abra-
 ham and to his seed shall not be sold for euer,

The 26. Chapter.

bindeth no land out of the land of promise, & some men wil say, that sithen the passion of our Lord was promulgate and knowne, bindeth not there. And is the second reason which is grounded vpon the commandement of God: It must needs be granted that it is not lawfull to any man vnlawfully to couet the house of his neighbour, and that then moze stronger he may not vnlawfully take it from him: but then it remaineth for thee yet to pzooue how in this case this tailed land that is sold by his ancestor, and whereof a reconerie is had recozded in the kings court, may be said the lands of the heire. D. That may be pzooued by the law of the Realme, that is to say, by the Statute of Westminster the second cap. 1. where it is said thus The will of the giuer expressely contained in the deed of his gift, shal be from henceforth obserued, so that they to whom the tenements bee so giuen, shall not haue power to alien, but that the lands after their death shall remaine to the issue or retourne to the donour, if the issue faile: By the which statute it appeareth evidently that though they to whom the tenements were so giuen, aliened them away, that yet neuertheless they in law and conscience by reason of the said Statute ought to remaine to their heires according to the gift, for it is holden commonly by all Doctors that the commaundments and rules of the law of man or of a positive law that is lawfully made, bind all that be subiects to the law according to the mind of the maker, and that in the Court of conscience.

Sr. Doeſt thou think that if a man offend a-
 gainſt a Statut Penall that he offendeth in con-
 ſcience? Admit that he do it not of a wilfull diſ-
 obedience, or that hee will not obey the law, for
 if hee doe it of diſobedience, I thinke he offen-
 deth. D. If it be but onely a Statute that is
 called Popular, it bindeth not in conſcience to
 the payment of the penaltie, till it be recovered
 by the law, and then it doth bind in conſcience :
 but if a Statute be made principally to remedie
 the hurt of one partie, & for that hurt it giueth
 a penaltie to the partie, in that caſe the offen-
 dour of the Statute is bound immediately to
 reſtore the damages to the value of the hurt,
 as it is vpon the Stat. of Maſſe, but the penal-
 tie aboue the hurt hee is not bound to pay till
 iudgemēt be given as it is ſaid befoze : but ſta-
 tutes by which it is assigned who ſhall haue
 right or proprietie to theſe Lands and Tene-
 ments, or to theſe goods or cattels, if it bee not
 againſt the law of God, nor againſt the law of
 reaſon, bind all them that bee ſubiect to the
 law, in law and conſcience, and ſuch a Statute
 is the Statute of Weſt. 2 whereof we haue trea-
 ted befoze, wherefoze it muſt be obſerved in con-
 ſcience.

S. But ſome hold that the Statute of Weſt-
 miniſter the ſecond was made of a ſingularitie
 and preſumption of many that were at the ſaid
 Parliament, for exalting and magnifying of
 their owne blood, and therefore they ſay that
 that Statute made by ſuch a preſumption bind-
 eth not in conſcience.

D. It is very perillous to iudge for certaine

The 26. Chapter.

that the said Statute was made of such presumption as thou speakest of : for there be many considerations to prove that the sayde Statute was not made of such presumption, but rather of a verie good mind of all the parliament, or at the least of the moze part thereof, & for the common wealth of all the realme: & first in the King the which in the said Parliament was the head, and most chiefe and principall part of the Parliament (as he is in everie Parliament) cannot be noted to be such intent : for it is not necessary nor it was not then in use, that lands of the Crowne should be entailed: and in spirituall men, ne yet in certaine Burgesles & Citizens of the said Parliament which at that time had no land, there can be noted no such singularity: nor yet in the Noble men and Gentlemen nor such other as were of the said Parliament and had Lands and tenements. It is not good to iudge in certaine that they did it of such presumption, but it is good and expedient in this case as it is in other cases that be in doubt, to hold the surer way, & that is, that it was made of charitie, to the intent that hee nor the heires of him to whom the land was given should not fall into extreme povertie, and thereby happly to run into offence against God. And though it were true as they say, that it was not made of charitie but of presumption and singularity as they speake of: Nevertheless so far as much as the Statute is not against the Law of God nor against the Law of Reason, it must be observed by all them that be Subjects vnto that
Law

Law. For as Iohn Gerson in the Treatise that he intituled in latine, De vita spirituali animæ, the fourth lesson, and the thirde corollary, sayth that God will that makers of Lawes iudge onely of outward things, and reserue secret things to him And so it appeareth that man may not iudge of the inward intent of the deed, but of such things as bee apparant and certaine, but it is not apparant that there was any such corrupt intent in the makers of the said Statute: how may it therefore be said that that Law is good or rightwise, that not only suffereth such things against the Statute, but also against the commandement of God? St. To that some aunswere and say that when the land is sold, and a recouerie is had thereupon in the Kings Court of Record, that it suffiseth to barre the taylor in conscience, for they say, that as the taylor was first ordained by the Law, so they say that by the Law it is adnulled againe. Do. We thou thy seife Judge, if in that case there be like authozity in the making of the taylor, as there is in the adnulling thereof: for it was ordained by authozitie of Parliament, the which is alway taken for the most high Court in this Realme befoze any other, and it is adnulled by a false supposell, for that, that they that bee named demandants should haue right to the land, where in trueneth they had neuer right thereto: whereupon followeth a false supposell in the writ, and a false supposell in the declaration, & a voucher to warrant by coveyn of such a person as hath nothing to peeld in value, and thereupon by comin

The 26. Chapter.

and collusion of the parties followeth the default of the vouchee, by the which default the iudgement shalbe giue. And so all the iudgement is deriued & grounded of the vnttrue supposel & couin of the parties, whereby the Law of the realme þ hath ordained such a writ of Entre to help them that haue right to lands or tenements is defrauded, the court is deceived, the heire is disinherited, & as it is to doubt, the buyer and the seller, their heirs & assignes having knowledge of the taile bee bound to restitution, & verily I haue heard many times, that after the Law of the Realme such recoveries should be no barre to the heire in the taile, if the law of the realme might be therein indifferently heard. S. I cannot see but that after the Law of the realme it is a barre of the taile, for when the tenant in taile hath vouched to warranty, & the vouchee hath appeared & entred into the warranty, and after hath made default in despite of the court, wherupon iudgement is giuen for the demandant against the tenant, & for the tenant that he shal recover in value against the vouchee: if the heire in the taile should after bring his Formedon & recover the lands entailed, and after the vouchee purchaseth lands, then should the heire also haue execution against him to the value of the lands entailed, as heire to his ancestor that was tenant in the first action, and so he should haue his own lands, and also the lands recovered in value: & therfore because of the presumption that the vouchee may purchase lands after the iudgement, some be of opinion that it is in the law a good bar of the taile. D. I suppose that

that in that case thou hast put, that the houchee may barre the heire in taile of his recoverie in balne, because he hath recovered the first lāds. **N**evertheles I will take a respite to be advised of that recovery in balne. And if thou can yet shew me any other consideration why the said recoveries should stand with conscience, I pray thee let mee heare thy conceit therein, for the multitude of the said recoveries is so great, that it were great pity that all should be bound to restitution that have lands by such recoveries, sith there is none (as far as I can heare) dispose them to restore. **S**cu. Some men make another reason to pzoove that the said recoveries should be sufficient by the law to avoid the Statute of West. then and if they bee sufficient therto, they be sufficient in conscience. **D.** What is their reason therein? **S.** In the 7. yere of H. 8. ca 4. among other things it is enacted, that all recoverers their heires and assignes, may answer and iustifie for rents, services, & customs by them recovered, as they against whom they recovered might have done. And then they say that when the Parliament gave to such recoverers authoritie to answer and iustifie for such rents, customs, and services, as they recovered, that the intent of the Parliament was, that such recoverers should have right to that for the which they should answer or iustifie: for els they say that it should bee in balne to give them such power, and that the Parliament should else bee taken in maner as fortifiers of wrongfull titles, and so they say that such recoverers by reason of the said Statute have right

The 26. Chapter.

right by the law. D. That statute as it seemeth
 was made onely to giue to the recouersers , a
 forme to know and iustifie which they had not
 befoze, though they had recouered vpon a good
 title. And the cause why they had no forme to
 know or iustifie befoze the said Statute was,
 forasmuch as the recouersers did not by the
 pretence of their action, affirme the possession
 of him or them against whom they recouered,
 nor claimed not by them , but rather disaffir-
 med and destroyed their estate : And therefore
 they cannot alledge any continuance of their
 title by them , as they may that haue rents or
 seruices, or such other of the graunt of other
 by deed or by fine. And therefore as it seemeth
 the most principall intent of the statute was,
 that such recouersers should know and iustifie
 for rents, seruices and customs, as they should
 or might do that had them by fine, or deed : not
 hauing any respect as it seemeth whether they
 recouered against tenant in fee simple, or in fee
 taylor, nor whether the recoveries were had
 vpon a rightfull title. And therefore as mes-
 seemeth the said Statute neither affirmeth nor
 disaffirmeth the title of recouersers , whereby
 they doe know : For if a man had right befoze
 the recoverye , the right should remaine vnto
 him notwithstanding the said Statute, and so
 me seemeth that the title of them that haue the
 land entayled by such recoveries , is nothing
 fortified nor affirmed by the sayde statute, but
 that they are in the same case as they were be-
 fore, what thinkest thou therein? S. This matter
 is great, for as thou sayest there bee so many
 that

that haue tailed lands by such recoveries, that it were great pitie and heavinesse to condemne so many persons, & to iudge that they all were bound to restitution. For I thinke there bee but few in this realme that haue lands of any notable value, but that they or their ancestors, or some other by whom they claime, haue had part therof by such recoveries. Insomuch that Lords Spirituall and Temporall, Knights, Squires, rich men and poore, Monasteries, Colledges and Hospitals haue such land, for such recoveries haue beene vled of long time: who may thinke therefore without great heavinesse, that so many men should bee bound to restitution, and that yet as thou saiest, no man disposeth him to make restitution. And so I am in manner perplexed and wot not what to say in this case, but that yet I trust that ignorance may excuse many persons in this behalf. Doct. Ignorance of the deed may excuse but ignorance of the Law excuseth not, but it bee inuincible, that is to say, that they haue done that in them is to know the trueth: as to counsaile with learned men, and to aske them what the Law is in that behalfe, and if they aunswer them, that they may do this or that lawfully, then they be therby excused in conscience. But yet in mans Law they be not therby discharged, but they that haue taken vpon them to haue knowledge of the Law, be not excused by ignorance of the Law, ne no more are they that haue a wilfull ignorance, and that would rather bee ignorant than to know the trueth. And therefore they will not dispose them to
 aske

The 26. Chapter.

like any Counsaile in it, and if it be of a thing that is against the Lawes of God, or the lawe of reason, no man shall bee excused of ignorance, and so there bee but few that bee excused by ignorance. S. What then, shall wee condemne so many and so notable men? D. Wee shall not condemne them, but wee shall giue them their perill. S. Yet I trust their danger is not so great that they should be bound to restitution: For Iohn Gerson saith in his said booke called, *De unitate Ecclesiastica, cōsideratione secunda, Quod communis error facit ius*: that is to say, A common error maketh a right, of which words as it seemeth sometrust may be had, that though it were fully admitted the sayd recoveries were first had vpon an vnlawfull ground and against the good order of conscience, that yet neuerthelesse, forasmuch as they haue been vsed of long time, so that they haue bin taken of diuers men that haue been right well learned, in maner as for a law, that the buyers partly be excused, so that they bee not bound to restitution. And mozeouer, it is certaine that the Statute of Westminster the second, nor none other statute made by man cannot be of greater value or strength, than was the bond of matrimony that was ordained of God. And though that bond of Matrimonie was indissoluable, yet neuerthelesse Moses suffered a bill of refusal of the Iewes, which in Latin is called *Libellum repudij*, and so they might thereby forsake their wives, as it appeareth Deutro. 22. and therefore like as a dispensation was suffered against that bond, so it seemeth it may bee against

gainst this statute. D. As to that reason that thou hast last made of a bill of refusal, let all purchasers of land heare what our Lord saith in the Gospell of the Iewes, of that bill of refusal, Mathew 19. where he saith thus, For the hardnesse of your hearts Moses suffered you to leaue your wiues: for at the beginning it was not so. Of which words Doctors hold commonly that though such a bill of refusal was lawfull so that they that refused their wiues therby, should be without paine in the law, that yet it was neuer lawfull so that it should bee without sin. And so likewise it may be said in this case that such recoveries bee suffered for the hardnesse of the hearts of Englishmen, which desire land and possession with so great greedinesse that they cannot be withdrawne frō it neither by the law of God nor of the realme: And therefore the rich men should not take the possessions of poore men from them by power, without colour of tytle, that is to say, neither by open Disseisin, or by the onely sale of the tenant in taile, and so to hold them against the expresse words of the statute, such recoveries haue bin suffered. And though for their great multitude they may happily be without paine as to the law of the Realme: yet it is to feare that they bee not without offence, as against God: and as to the other reason, that a cōmon error should make a right, those words as mee seemeth be to be thus vnderstood, that a custome pld against the Law of man shall be taken in some countries for law, if the people be suffered so to continue. And yet some men call such
a cu-

The 26. Chapter.

a custome an error, because that the continuance of that custome against the law was partly an error in the people, for that they would not obey the Law that was made by their superiours to the contrarie of that Custome: but it is to bee understood that the said recoveries though they haue beene long used, may not bee taken to haue the strength of a custome, for many as well learned as vnlearned haue alway spoken against them and yet doe. And furthermore as I haue heard say, a custome or a prescription in this Realme against the Statutes of the realm preuaile not in the law. S. Though a custome in this Realme preuaileth not against a Statute as to the Law, yet it seemeth that it may preuaile against the Statute in conscience: for though ignorance of a Statute excuseth not in the law, neuerthelesse it may excuse in conscience, and so it seemeth that it may do of a custome. Do. But if such recoveries cannot be brought into a lawfull custome in the Law, it seemeth they may not be brought into a Custome in conscience, for conscience must alway bee grounded vpon some Law, and in this case it cannot be grounded vpon the law of reason, nor vpon the Law of God: and therefore if the Law of man serue not, there is no ground whereupon conscience in this case may be grounded, and at the beginning of such recoveries, they were taken to be good because the Law should warrant them to bee good, and not by reason of any Custome, and so if the reason of the Law will not serue in the recoveries, the custome cannot helpe, for an euill Custome is

is to be put away. And therefore mee seemeth that the recoveries bee not without offence against god, though happily for their great multitude, and that there should not be as it were a subuersion of the inheritance of many in this Realme, as well of spirituall oz tempozal, they be without paine in the Law of the Realme, except such recoveries as by the cōmon course of the Law be voidable in the Law by reason of some ble, oz of some other speciall matter: but what paine that is, I will not temerously iudge, but commit it to the goodnesse of our Lord, whose iudgements be verie deepe and profound, nor I will not fully affirme that they that haue lands by such recoveries ought to be compelled to restitution: but this seemeth to mee to be good counsell, that euery man hereafter hold that is certain, and leaue that is vncertaine, and that is, that hee keepe himselfe from such recoveries, and then hee shall be free from all scrupulousnesse of conscience in that behalfe.

Stu. It seemeth that in this question thou ponderest greatly the said Statute of Westminster the second, and that though it be but onely a Law made by man, that yet forasmuch as it is not against the law of reason, nor the Law of God, thou thinkest that it must be holden in conscience: and ouer that as it seemeth thou art somewhat in doubt, whether those recoveries bee any barre to the heire in the taylor by the law of the Realme, vnlesse that hee haue in value in deed vpon the vouchee, and that thou wilt thereupon take a respite oz thou shew thy
full

The 26. Chapter.

full mind therein, and in likewise thou thinkest as I take it, that those recoveries cannot be brought into a custome, but that the longer that they be suffered to continue if they be not good by the Law, the greater is the offence against God. And therefore thou ponderest little that custome, but yet thou agreeest that it is good to spare the multitude of them that be past, least a subuersion of the inheritance of many of this realme might follow, and great strife and variance also, if they should be aduulled for the time past, except there be any other speciall cause to auoid them by the Law, as thou hast touched in the last reason: but thou thinkest that it were good, that from hence forth such recoveries should be cleerely prohibited, and not be suffered to be had in vyle, as they haue beene before, and thou counselest all men therefore to refrain themselves from such recoveries hereafter. Do. Thou takest well that I haue sayd, and according as I haue meant it. D. Now I pray thee, sith I haue heard thy question of these recoveries, according to thy desire, that thou wouldest aunswere me to some particuler questions concerning Tailed lands, whereof thou hast at this time giuen vs occasion to speake. D. Shew me these questions, & I will shew thee my mind therein with good will.

¶ The first question of the Student, concerning tailed lands.

Cap. 27.

If a disseisor make a gift in taile to John a
 Stile, and J. at S. for the redēming of the
 title of the disseisee, agreeth with him that hee
 shall have a certain rent out of the same land to
 him & to his heires, & for the suretie of the rent
 it is devised that the disseisie shall release his
 right in the land &c. & that such a reconerie as
 we have spoken of before, shalbe had against the
 said J. at S. to the vse of the payment of the
 said rent and of the former taile: whether it au-
 deth that reconerie well with conscience or not,
 as thou thinkest? D. I suppose it both, for it is
 made for the strength and suretie of the taile,
 which the disseisie might have cleerely defrated
 and avoided if he would, & therfore I thinke if
 the said J. at S. had granted to the disseisie,
 onely by his deed a certain rent for the releasing
 of his title, that graunt should have bound the
 heires in the taile for ever. And then if the dis-
 seisie for his more suretie will have such a re-
 couerie, as before appeareth, it seemeth that re-
 couerie standeth with good conscience. S. it see-
 meth that thy opiniō is right good in this mat-
 ter And also it appeareth that with a reasona-
 ble cause, some particular recoveries may stand
 both with law & conscience to bar a taile.

¶ The second question of the Student, con-
 cerning tailed lands.

Cap. 28.

If a tenant in taile suffer a recoverie against
 him of his lands entailed, to the intent that
 the

The 28. Chapter.

the recoverer shall stand seised thereof, to the use of a certain woman whom he intendeth to take to his wife, for terme of life, and after to the use of the first Talle, and after he marieth the same woman, whether standeth that recovery with conscience, though other recoveries upon bargaines and sales did not? Do It seemeth yes, for though the statute bee that they to whom the tenements be so given, should not have power to alien, but that the Lands after their death should remaine to their issues, or revert to the donours, if the issues failed: yet if hee to whom the Lands were so given, take a wife, and dyeth seised without heire of his body, and the donour enter, the woman shall recover against him the third part to hold in the name of her dowry, for terme of her life, though the talle be determined. And the same law is of tenant by the Curtesie, that is to say, of him that happeneth to marry one that is an inheritrix of the Land entailed, and they have issue, the wife dyeth, and the issue dyeth, he shall hold the lands for terme of his life, as tenant by the curtesie, notwithstanding the words of the statute which say that after the death of the tenant in talle without issue, the lands shall revert to the donour: and I thinke the cause is because the intent of the statute shall not be taken, that it intended to put away such titles as the Law should give, by reason of the Talle: and so it seemeth that a like intent of the Statute shall be taken for Jointures, for els the Statute might be sometime a letting of Matrimony, and it is not like that the Statute intended

so. And therefore it seemeth, that by the onely deed of the tenant in taile, a Jointure may be made by the intent of the Statute, though the words of the statute serue not expressly for it: for many times the intent of the letter shall be taken, and not the bare letter, as it appeareth in the same Statute, where it is said, that hee to whom the lands be giue shall haue no power to alien: yet the same Statute is construed that neither he nor his heires of his body shall haue no power to alien: & so mee thinketh that such an intent shall be taken here for sauing of iointures. St. Truth it is, that sometime the intent of a Statute shall be taken further than the expresse letter stretcheth, but yet there may no intent bee taken against the expresse words of the Statute, for that should bee rather an interpretation of the Statute, than an exposition: and it cannot bee reasonably taken, but that the intent of the makers of the sayd Statute was, that the land should remaine continually in the heires of the taile, as long as the taile endureth: and there can no Jointure be made neither by deed nor by recouerie, but that the taile must thereby be discontinued, and therefore this case of iointure is not like to the said cases of Tenant in Dowry, or Tenant by the Curtesie: for the title of Dowry, and of Tenancie by the Curtesie groweth most specially by the continuance of the possession in the heires of the Taile, but it is not so of iointures: and therefore by the onely deed of the Tenant in the Taile, there may no Jointure bee lawfully made against the expresse words

The 29. Chapter.

of the statute. And if there be any made by way of recovery, then it seemeth that it must be put under the same rule, as other recoveries must be of lands entailed.

¶ The third question of the Student concerning tailed lands.

Cap. 29.

If John at Stoke being seised of lands in fee of his meer mot: & make a feoffment of certaine lands to the intent that the feoffees shal thereof make a gift to the said Jo: at Stoke to have to him and to his heires of his bodie, and they make the gift according; And after the said J. at Stoke falleth into debt, where fore he is taken and put in prison, and thereupon for payment of his debts, hee selleth the same land and for suretie of the buyer he suffereth a recovery to bee had against him in such manner as before appeareth, whether standeth that recovery with conscience or not? D. I would here make a little digressiō to aske thee another question or that I make answer to thine: that is to say, to seele thy mind how the Law by the which the bodie of the debtōr shal be taken and cast into prison, there to remain til he have paid the debt, may stand with conscience; specially if hee have nothing to pay it with, for as it seemeth if hee will relinquish his goods which in some lawes is called in latine Cedere bonis, that he shall not bee imprisoned, and that is to be understood most specially if hee bee fallen into

pouertie, and not through his owne default.
 S. There is no law in the realme that the de-
 fendant may in any case Cedere bonis, & as me
 seemeth if there were such a law, it should not
 bee indifferent, for as to the knowledge of him
 that the money is owing to, the debtoz might
 Cedere bonis. *¶* is to say, relinquish his goods,
 and yet retaine to himselfe secretly great ri-
 ches. And therefore that Law in such case see-
 meth moze indifferent & righteous that com-
 mitteth such a debtoz to the conscience of the
 plaintife to whom the money is owing, than
 the committing him to the conscience of him
 that is the debtoz: for in the debtoz some de-
 fault may be assigned, but in him to whom the
 money is owing, may be assigned no default. D.
 But if he to whom the debt is owing, know-
 eth that the debtoz hath nothing to pay the
 debt with, and that hee is fallen into pouertie
 by some casualtie, and not through his owne
 default, both the law of England hold, that he
 may with good conscience keepe the debtoz still
 in prison till he be paid? St. May verily, but it
 thinketh moze reasonable to appoint the libera-
 tie and the iudgement of conscience in that case
 to the debtee than to the debtoz, for the cause
 before rehearsed. And then the debtour, if hee
 knew the trueth, is (as thou hast said) bound in
 conscience to let him goe at libertie though hee
 bee not compellable thereto by the Law. And
 therefore admitting it for this time, that the
 law of England in this point is good and iust,
 I pray thee that thou wilt make answere to
 my question. Doct. I will with good will, and

therfoze as me ſeemeth, ſoꝛ as much as it appea-
 reth that the ſaide gift was made of the meere
 liberty and freewill of the ſaid John at Stoke,
 and without any recompence: that therfoze
 it cannot bee otherwiſe taken, but that the in-
 tent of the ſaid J. at Stoke, as well at the time
 of the ſaide feoffement, as at the time that he
 receiued againe the ſaid gift in the caple, was,
 that if he happened afterwards to fall into po-
 uertie, that he might alien the ſaid Land to re-
 lieue him ſw. th, ſoꝛ how may it be thought that
 a man will ſo much ponder the wealth of his
 heire, that he will forget himſelfe: and ſo it ſe-
 meth that not onely the ſaid reuerſie ſtandeth
 with conſcience, but alſo if he had made onely a
 feoffement of the land, the feoffement ſhould be
 in conſcience a good barre of the taile: but if the
 ſaid feoffement and gift had bin made in conſi-
 deration of any recompence of money, oꝛ ſoꝛ a-
 ny matrimony oꝛ ſuch other, then the teſtament
 of the ſaid J. at S. ſhould not bind his heire, &
 if he then ſuffered any recovery thereof, then the
 recovery ſhould bee of like effect as other reco-
 ueries whereof we haue treated befoze, & that
 which I ſaid it was good to ſauour rather ſoꝛ
 their multitude, thā ſoꝛ the conſcience: and the
 ſame law is, that if the ſon and the heire of the
 ſaid J. at Stoke in caſe that the ſaid gift was
 made without recompence, alien the land ſoꝛ
 pouerty after the death of his father, the reco-
 uery bindeth not but as other recoveries doe:
 ſoꝛ it cannot bee thought that the intent of the
 father was, that any of his heirs in taile ſhould
 ſoꝛ any neceſſity diſherite all other heirs in
 taile

taile that should come after him, but for himselfe
 mee thinketh it is reasonable to Judge in such
 maner as I haue said befoze. St. And though
 the intent of the said John at Moke, when he
 made the said feoffement, and when he toke a-
 gaine the said gift in taile, were that if he fel in
 need that he might alien: yet I suppose that he
 may not alien though percase for the moze sure-
 tie he declared his intent to be such vpon the li-
 ttery of seisin: for that intent was contrary to
 the gift that he freely toke vpon him, and when
 any intent or condition is declared or reserved
 against the State that any man maketh or ex-
 cepteth: then such an intent or condition is void
 by the law, as by a case that hereafter follo-
 weth will appeare, that is to say, If a man make
 a feoffement in fee, vpon condition that the fe-
 offee shall not alien to any man, that condition
 is void, for it is incident to euery state of the
 fee simple, that hee that is so seised may alien.
 And like as in a fee simple there is incident a
 power to aliē, so in a State taile there is a secret
 intent vnderstood in the gift, that no alienation
 shalbe made. And therefore though the intent
 of the said Jo. at M. were, that if he fell into
 ponertie that he might sei, and though he at the
 taking of the gift openly declared his intent to
 be so: yet the intent should be void by the law
 as me seemeth, and if it be void by the law, it is
 also void in conscience, and so the said recovery
 must be taken in this case to be of the same ef-
 fect, as recoveries of other lands intailed bee,
 and in no other maner.

The 30. Chapter.

¶ The fourth question of the Student, concerning Recoveries of Enheritances entailed.

Cap. 30.

If an Annuittie be granted to a man to have and to perceiue to the grantee, & to the heires of his bodie, of the cofers of his grantor: and after the grantee suffereth a recovery against him in a writ of Entre, by the name of a rent in Dale of a like sum as the Annuity is of, with vouchers & iudgement after the cōmon course, and both parties intend that the Annuity shall be recovered: whether shall the recovery bind the heire in taile of his Annuity? D. What if it were a rent going out of Land, of what effect, should the recovery be then? Stu. It should be then of like effect as if it were of land Do. And so it seemeth to be of this Annuity, for as mee thinketh, a rent, and Annuity bee of one effect, for the one of them shal be paid in ready money as the other shall. S. Turneth, and yet there be many great diuersities betwixt them in the law. D. I pray thee shew me some of those diuersities. Stu. Part I shall shew thee, but I wot not whether I can shew thee all, but first thou shalt vnderstand that one diuersity is this. Cuerie Rent, be it Rent seruice, Rent charge, or Rent secke, is going out of land, but an Annuity goeth not out of any Land, but chargeth onely the person, that is to say, the Grantor, or his heires that haue Assets by discent, or the house if it bee granted by a house

house of Religion to perceiue of their cofers. Also of an Annuitie there lyeth no action, but onely a writ of Annuitie against the grantor, his heires, or successors, and that writ of Annuitie lyeth neuer against the pernor, but only against the grantor or his heires: but of a rent, the same action may lye, as doth of land as the case requireth, and it lyeth sometime of rent against the pernor of the rent, that is to say, against him that taketh the rent wrongfully, and sometime against neither. As of a rent seruice, Assise may lye for the Lord against the Mesne, & the Disseisor, or sometime against the Mesne onely, if he did also the disseisin. Also an Annuitie is neuer taken for an assets, because it is no freehold in the Law, ne it shall not be put in execution vpon a Statute Merchant, Statute Staple, ne Elegit, as a rent may. And because the said Writ of Centre lay not in this case of this annuity, & that it cannot be intended in the law to be the same annuity, though it be of like sum with the annuity, ne though the parties assented & meant to haue the same annuity recovered by the said writ of Centre, therefore the said recovery is void in law & conscience. But if such a recovery bee had of rent with a voucher ouer, then it shall be taken to be of like effect, as recoveries of lands bee in such manner as we haue treated of before.

¶ The fift question of the Student concerning tailed Lands,

Cap.

The 31. Chapter.

Cap. 31.

If lands bee given to a man and to his wife in the name of her Joynture, by the father of the husband, to have and to hold to them and to the heires of their two bodies, begotten, and after they have issue and the husband dieth, and the wife alieneth the land, & against the statute of 11. H. 7. suffereth a recovery thereof to be had against her, to the use of the buyer, & after her sonne & heire apparant that is heire to the taile releaseth to the recoverers by fine, & dyeth, having a brother alive, and after the mother dyeth: who hath right to the land, the buyer, or the brother of him that released? **D.** What is thine opinion therein, **I** pray thee shew me. **S.** It seemeth that the buyer hath right, for by the said statute made in the 11. yere of H. 7. among other things it is enacted, that if any woman which hath lands of the gift of her husband, or of the gift of any of the Ancestors of the husband suffer any recovery thereof against her, by covin, that then such recovery shalbe void, & that it shall bee lawfull to him that should have the Land after the death of the woman to enter, & it to hold as in his first right: provided alway that that statute shall not extend where he that should have the land after the death of the woman is agreeable to any such alienation or recovery, so that the agreement be of record. And forasmuch as the heire in this case agreed to the said recovery & fine, which is one of the highest Records in the law, it seemeth that the buyer hath right against that heire that agreed, and against

against all that shall bee heire of the taile, and that not onely by the said reconerie, but also by the said Statute, whereby the sayde recovery with assent of the heire is affirmed. D. Though the buyer in this case hath right during the life of the heire that released, yet neuerthelesse, after his death his heire as it seemeth may lawfully enter: for the agreement wherof the Statute speaketh, must as I suppose either be had befoze the recovery, or else at the time of the recovery: For if a Title by reason of the sayde Statute be once devolute to the heire in the tail, then the right as mee seemeth cannot be extinct nor put away by the onely fine of the heire, no moze than if he had dyed, and the next heire to him had released to the buyer by fine, in which case the release could not extinct the right of the Title, nor the right of Centre that is given by the Statute: and so as mee seemeth, his next heire may therefoze enter. S. As I perceiue all thy doubt is in this case, because the assent of the heire was after the recovery: for if it had been at the time of the recovery, as if the heire had bin vouchd to warrant in the same recovery, and he had entred, and thereupon the iudgement had beene given, thou agreest wel, that the recovery should haue auoided the taile for ever.

Doctor. That is true, for it is in expresse words of the Statute, but when the assent is after the recovery, then mee thinketh it is not so, ne that the right of the first taile, which was receiued by the said Statute, shall not bee extinct by his fine, no moze than it shall in
other

The 31. Chapter.

other taile. **Stu.** I will be aduised vpon thy opinion in this matter, but yet one thing would I moue further vpon this Statute, and that is this: Some say, that by this Statute all other recoveries that haue bin had ouer beside these recoveries of Joyntures be affirmed: for they say, that sith the Parliament at the making of this Statute, knew well that many other recoveries were then vled and had, to defeate Tailles, that it was like that they would so continue, which neuerthelasse the Parliament did not prohibit for the time to come, as it did the said Recoveries of Joyntures: that it is therefore to suppose, that they thought that they should stand with Law and conscience: but because Joyntures were made rather for the saving of inheritance of the husband than to destroy the inheritance, they say that the Parliament thought and aduoged the alienations and recoveries of such Joyntures to be against the law & conscience, and not the Alienations of other lands entailed: for if they had, they say that the Parliament would haue auoided recoveries of tailed lands generally, as well as it did of Recoveries of Joyntures. **Do.** As to that opinion I will aunswere thee thus for this time, that though that the makers of the said estatute onely put away recoveries of Joyntures, and not other recoveries that yet it cannot be taken therefore that their intent was that the other Recoveries should stand good & perfect: for they spake them onely of Joyntures, because there was no complaint made in the Parliament at that time, but
against

against recoveries had of Jointures, and therefore it seemeth that they intended nothing concerning other recoveries, but that they should bee of the same effect as they were before, and no otherwise. And that will appeare more plainly thus: though the makers of the sayde statute intended to put away & aduail such recoveries as should bee made of iointures after a certaine day limited in the Statute, that yet they intended not to auoid ne affirme such recoveries of Jointures as were passed before that time: and if thy intended not to auoid ne affirme the recoveries had of iointures before that time, then how can it bee taken, that they intended to put away, or affirme other recoveries that were passed before that time, & not if Jointures, that would not affirme, ne put away recoveries passed of iointures before that time? And so, as it seemeth, they intended to spare the multitude of them that were passed of both, and not to comfort any to take them after that time. *Sru.* I am content thy opinion stand for this time, and I will aske thee another question.

¶ The sixt question of the Student concerning tailed lands.

Cap. 32.

If tenant in taile be disseised, & die, & an ancestor collaterall to the heire in taile release with a warranty, & die, & the warranty discēdeth vpon the heire in the taile: whether is he there-

The 32. Chapter.

therby barred in conscience, as he is in the law? D. Because your principall intent at this time is to speake of recoveries, & not of warranties, & also because it hath bin of long time taken for a principall maxime of the law, that it should be a barre to the heires aswell that claime by a fee simple, as by state taile, and for that also that it was not put away by the said statute of W. 2. which ordained the taile, I will not at this time make the answere therein, but will take a respite to be advised. Sir Then I pray the yet oz we depart, shew me what was the most principall cause that moued the to moue this questiō of recoveries had of tailed lands. D. This moued me thereto: I haue perceined many times that there bee many diuers opinions of these Recoveries, whether they stand with conscience oz not, & that it is to doubt that many persons run into offence of Conscience thereby. And therefore I thought to feele thy mind in them. whether I could perceiue that it were cleare, that they serued to breake the taile in law and conscience, oz that it were cleerly against conscience so to breake the taile, oz that it were a matter in doubt: if it appeared a matter in doubt, oz that it appeared that the matter were bled cleerly against conscience, then I thought to do somewhat to make the matter appeare as it is, to the intent that they that haue the rule & charge ouer the people as well the spirituall men as tempozal men, should the rather endeuour them to see it reformed for the commonwealth of the people, aswell in bodie as in soule. For when any thing is bled to the
dis.

displeasure of God, it hurteth not onely the body, but also the soule. And tēporall rulers haue not onely care of the bodies, but also of the soules, & shal answere for them if they perish in their default. And because it seemeth by þ more apparant reason that the tailles be not broken, ne fully auoided by the said recoueries, & that yet neuerthelesse the great multitude of them that be passed is right much to bee pondered: Therfore it shal be very good to prohibite them for time to come, to put away such ambiguities and doubts as arise now by occasiō of the said recoueries; and so they be put as snares to deceiue the people, and so will they be as long as they be suffered to cōtinue. And me thinketh verily that it were therfore right expedient, that tailed lands should from henceforth either be made so strong in the law, that the tale should not bee broken by recovery, fine with proclamation, collaterall warranty, nor otherwise: or else that all tayles should be made fee simple, so that euery man that list to sell his land, may sell it by his bare feoffement, & without any scruple or grudge of conscience: & then there should not be so great expēces in the law, nor so great variance among the people, ne yet so great offence of conscience as there is now in many persons. S. Verily mee thinketh that thy opinion is right good, & charitable in this behaile: and that the rulers be bound in conscience to looke vpon it to see it reformed and brought into good order. And verily by that thou hast said therein, thou hast brought me into remembrance, that there be diuers like snares con.

The 32. Chapter.

concerning spirituall matters suffered among the people, wherby I doubt that many spirituall rulers be in great offence against God. As it is of the point that spirituall men haue spoke so much of, that priests should not be put to answer before lay men, specially of felonies and murders: and of the statute of 45. E. 3. c. 3. wher it is said, that a Prohibition shall lye where a man is sued in the spirituall Court for tithe of wood, that is aboue the age of xx. yerres, by the name of Silua Cedua as it hath done before: and they haue in open sermons, & in diuers other open communications & counsellis caused it to be openly notified & known, that they should bee all accursed that put priests to, answer of that maintain the said estatut, or any other like to it. And after when they haue right wel perceived, that notwithstanding all that they haue done therein, it hath bin vbled in the same points throught all the realme, in like maner as it was before: then they haue sat still & let the matter pass, & so whē they haue brought many persons in great danger, but most specially thē that haue giuen credence to their saying, & yet by reason of old custome haue done as they did before, thē there they left them: but verily it is to feare that there is to themselves right great offence thereby, that is to say, to see so many in so great danger as they say they bee, and to doe no more to bring them out of it, than they haue done for it: if it be true as they say, they ought to sticke to it with effect in all charite, till it were reformed: and if it be not as they say, then they haue caused many to offend that haue giuen credence

to

to them; and yet contrarie to their owne conscience do as they did before, & that percase should not haue offended if such sayings had not bin. And so it seemeth that they haue in these matters done either too much, or too little.

And I beseech Almighty God, that some good man may so call vpon all these matters, that we haue now communed of, so that they that bee in authoritie may somewhat ponder them, and to order them in such maner that offence of conscience grow not so lightly thereby hereafter, as it hath done in times past. And verily he that on the Crosse knew the price of mans soule, will hereafter aske a right strait accompt of rulers for euery soule that is vnder them, and that shall perish thzough their default.

Thus haue I shewed vnto thee in this little Dialogue, how the Law of England is grounded vpon the Law of reason, the law of God, the generall Customes of the realme, and vpon certaine principles that be called Maxims, vpon the particuler Customes bled in diuers Cities and countries, and vpon statutes which haue bin made in diuers Parliaments by our Soueraigne Lord the King and his progenitors, and by the Lords Spiritual and Temporal, and all the Commons of the Realm. And I haue also shewed thee in the 9. Chapter of this Booke, vnder what maner the said generall Customes and Maxims of the law may be proued & affirmed if they were denied, & diuers other things bee contained in this present Dialogue, which will appeare in
 the

The 32. Chapter.

the table that is in the later end of the Booke,
as to the readers wil appeare. And in the end
of the said dialogue, I haue at thy desire shew-
ed thee my conceit concerning Recoueries of
tailed lands, and thou hast vpon the sayd reco-
ueries shewed mee thine opinion. And I be-
seech our Lord set them shortly in a good cleere
way: for surely it will be right expedient for the
well ordering of conscience in many per-

sons, that they be so. And thus the

God of peace and loue

be alway with vs

Amen.





Ere endeth the first Dialogue in English, with new additions, betwixt a Doctor of Diuinitie, and a Student in the Lawes of England. And hereafter followeth the second.

In the beginning of which Dialogue the Doctor answereth to certaine questions, which the Student made to the Doctor before the making of his Dialogue, concerning the Lawes of England and conscience, as appeareth in a Dialogue made betweene them in Latine the 24. ch. And he answereth also diuers other questions, that the Student maketh to him in this Dialogue, of the law of England and conscience. And in diuers other Chapters of this present Dialogue is touched shortly, how the Lawes of England are to bee obserued and kept in this Realme, as to temporall things aswell in Law as in conscience, before any other Lawes. And in some of the Chapters thereof, is also touched that spirituall Iudges in diuers cases bee bound to giue their Iudgements according to the kings Law. And in the later end of the Booke the Doctor moueth diuer cases concerning the Lawes of England wherein hee douteth how they may stand with conscience, whereupon the Student maketh answer in such manner as to the Reader will appeare.

The Introduction.

In the latter end of our first Dialogue in Latin, I put diuers cases grounded vpon the Lawes of England, wherein I doubted, and yet doe, what is to bee holden therein in conscience. But forasmuch as the time was then farre past, I shewed thee that I would not desire thee to make aunswere to them forthwith at that time, but at some better leisure, whereunto thou saiest thou wouldest not onely shew thine opinion in these cases, but also in such other cases as I would put: wherefore I pray thee now (forasmuch as mee thinketh thou hast good leisure) that thou wilt shew me thine opinion therein. Do. I will with good will accomplish thy desire: but I would that when I am in doubt what \S law of this realm is in such cases as thou shalt put, that thou wilt shew me what \S law is therein: for though I haue by occasi \circ n of our first Dialogue in Latine learned many things of the lawes of this realm which I knew not before, yet neuertheless there bee many mo things that I am yet ignorant in, and that peradventure in these self cases that thou hast put & intendest hereafter to put: & as I said in the first Dialogue in Latin the 20. Chap. to search conscience vpon any case of the law it is in vaine, but where the law in the same case is perfectly knowne. So. I will with good will doe as thou saiest, & I intend to put diuers of the same questions, that be in the last Cha. of the said Dialogue in Latin, & sometime I intend to alter some of them, and adde some new questions to them, as I shall be mo \circ d
in

in doubt of. D. I pray thee do as thou saist, and I shall with good will either make answer to them forthwith as well as I can, or shall take longer respite to be advised, or else peradventure agree to thine opinion therein, as I shall see cause. But first I would gladly know þe cause why thou hast begun this Dialogue in the English tongue, and not in the Latin tongue, as þe first cases that thou desirest to know mine opinion in, be, or in French as the substance of the law. S. The cause is this. It is right necessarie to all men in this realme, both spirituall & tempozal for the good ordering of their conscience, to know many things of the Law of England that they be ignorant in. And though it had bin moze pleasant to them that be learned in the Latin tongue, to haue had it in latin rather than in English: yet neuerthelesse forasmuch as many can read English that vnderstand no Latin, & some þe cannot read English, by hearing it read may learne diuers things by it, whiche they should not haue learned if it were in Latin: Therfore for the profit of the multitude it is put into the English tongue rather than into the latin or French tongue. For if it had bin in French, few should haue vnderstood it, but they that be learned in the law, and they haue least neede of it, forasmuch as they know the law in the same cases without it, & can better declare what conscience will thereupon, than they that know not the law nothing at all. To them therefore that be not learned in the law of the realme this treatise is specially made: for thou knowest well by such studies thou hast

The 1. Chapter.

taken to some knowledge of the Law of the realme, that is to them most expedient. Doct. It is true that thou speest, and therefore I may thee now proceed to thy questions.

¶ The first question of the Student.

Cap. 1.

If tenant in tail after possibility of issue extinct, doe waite, whether doth he thereby offend in conscience though he be not punishable of waite by the law? D. Is the law cleare that he is not punishable for the waite? Stu. Ye verely. D. And what is the law of tenants for terme of life, or for terme of yeares if they do waite? S. They be punishable of waite, by the Statute, and shall paye treble damages: but at the common law before the statute they were not punishable. D. But whether thinkest thou that before the statute they might haue done waite with conscience, because they were not punishable by the Law. St. I thinke not, for as I take it, the doing of waite of such particuler tenant for terme of life, for terme of yeares, or of tenants in Dowry, or by the mortuorie, is prohibited by the Law of reason, for it seemeth of reason that when such leases be made, or that such titles in Dowry, or by the curtesie be given by the Law, that there is onely given unto them the annuall profits of the land, and not the houses and trees, and the grasse to digge and carrie away, whereby the whole profit of them in the reversion should bee taken away

for

for ever. And therefore at the common law for
wast done by tenant in dower, or tenant by the
curtelie, there was punishment ordained by the
Law, by a prohibition of wast, whereby they
should have payed damages to the value of
the wast. But against tenant for terme of life
or for terme of yeares, lay no such prohibition,
for there was no Maxim in the law therein,
against them, as there was against the other.
And I thinke the cause was, forasmuch as it
was iudged a feoff in the lessoz that made such
a lease for terme of life, or for terme of yeares,
that at the time of the lease he did not prohibit
them they should not doe wast, and sith hee did
not provide no remedie for himselfe, the Law
would none provide. But yet I thinke not that
the intent of the law was, that they might law-
fully and with good conscience doe wast, but a-
gainst Tenants in dower, and by the curtelie
the law provided remedy, for they had their re-
medie by the law.

And verily me thinketh that this tenant in
taile as to doing of wast, should be like to a te-
nant for terme of life: for he shall have the land
no longer than for term of his life, no more than
a tenant for terme of life shall, and the wast of
this tenant is as great hurt to him in the re-
version or the remainder, as is the wast of a
tenant for terme of life, and if hee alien, the
Donor shall enter for the forfeiture, as hee shall
upon the alienation of a tenant for terme of life
and if he make default in a *Præcipe quod red-
dar*, the Donor shall be received as he shall bee
upon the default of a tenant for terme of life:

The 1. Chapter.

taken to some knowledge of the Law of the realm, that is to them most expedient. Doct. It is true that thou speiest, and therefore I will thee now proceed to thy questions.

¶ The first question of the Student.

Cap. 1.

If tenant in tail after possibility of issue extinct, doe waite, whether doth he therby offend in conscience though he be not punishable of waite by the law? D. As the law cleare that he is not punishable for the waite? Stu. Ye verely. D. And what is the law of tenants for terme of life, or for terme of yeares if they do waite? S. They be punishable of waite, by the statutes, and shall paye treble damages: but at the common law before the statute they were not punishable. D. But whether thinkest thou that before the statute they might have done waite with conscience, because they were not punishable by the Law. Sr. I thinke not, for as I take it, the doing of waite of such particular tenant for terme of life, for terme of yeares, or of tenants in Dowry, or by the curtesie, is prohibited by the Law of reason, for it seemeth of reason that when such leases be made, or that such titles in Dowry, or by the curtesie be given by the Law, that there is onely given unto them the annuall profits of the land, and not the houses and trees, and the grasse to digge and carrie away, whereby the whole profit of them in the reversion should be taken away

for ever. And therefore at the common law for
wast done by tenant in dower, or tenant by the
curtesie, there was punishment ordained by the
Law, by a prohibition of wast, whereby they
should have payed damages to the value of
the wast. But against tenant for terme of life
or for terme of yeares, lay no such prohibition,
for there was no Maxim in the law therein,
against them, as there was against the other.
And I thinke the cause was, forasmuch as it
was iudged a folly in the lessoz that made such
a lease for terme of life, or for terme of yeares,
that at the time of the lease he did not prohibit
them they should not doe wast, and sith hee did
not provide no remedie for himselfe, the Law
would none provide. But yet I thinke not that
the intent of the law was, that they might law-
fully and with good conscience doe wast, but a-
gainst Tenants in dower, and by the curtesie
the law provided remedie, for they had their ti-
tle by the law.

And verily me thinketh that this tenant in
taile as to doing of wast, should be like to a te-
nant for terme of life: for he shall have the land
no longer than for terme of his life, no more thā
a tenant for terme of life shall, and the wast of
this tenant is as great hurt to him in the re-
version or the remainder, as is the wast of a
tenant for terme of life, and if hee alien, the
donor shall enter for the forfeiture, as hee shall
upon the alienation of a tenant for terme of life
and if he make default in a *Præcipe quod red-
dar*, the Donor shall be received as he shall bee
upon the default of a tenant for terme of life:

The 1. Chapter.

and therefore me thinketh hee shall also be punishable of wast, as tenant for terme of life. **Stat.** If he alien, the donoꝝ shall enter as thou saist because the alienation is to his disheritance, & therfoze it is a forfeiture of his estate; and this is by an ancient Maxim of the Law that giueth that forfeiture in the selfe case, and if he make default in a *Præcipe qđ reddat*, he in the reuerſiō, as thou saist, shall be receiued, but this is by the statute of *West. 2.* for at the Common law there was no such reſcit: & as for the statute that giueth the action of wast against a tenant for terme of life, and for terme of yeeres, it is a statute penal, and shall not be taken by equitie: & so there is no remedie giuen against him, neither by common law noꝝ by statute, as there is against tenant for terme of life. & therfoze he is unpunishable of wast by the law. **D.** And though he be unpunishable of wast by the law, yet neuerthelesse me thinketh he may not by conscience doe that, that shall be hurtfull to the inheritance after his time, sith he hath the Land but for terme of his life, no moze than a tenant for terme of life may, for then he should doe as he would not be done vnto. For thou sayest thy selfe, that though a tenant for terme of life was not punishable of wast before the Statute, that yet the Law iudged not that he might rightfully and with good conscience doe wast. And therfoze at this day if a feoffement bee made to the vse of a man for terme of life, though there lie no actiō against him for wast, yet he offendeth in conscience if he do wast, as Tenant for terme of life did afore the Statute.

tute, when no remedy lay against him by the law. **Sc.** That is true, but there is great difference between this tenant and a tenant for terme of life: for this tenant hath good authoritie by the donour to doe wast, and so hath not the tenant for terme of life, as it is said before: for the estate of a tenant in taile after possibility of issue extinct, is in this manner, when lands be given to a man and to his wife, & to the heires of their two bodies begotten, and after the one of them dyeth without heires of their bodies begotten, then he or she that overliueth, is called tenant in taile after possibility of issue extinct, because there can neuer by no possibility be any heire that may inherite by force of the gift. And thus it appeareth that the donees at the time of the gift, receiued of the donour estate of inheritance, which by possibility might haue continued for ever, whereby they had power to cut downe trees, and to doe all thing that is wast, as tenant in fee simple might. And that authoritie was as strong in the law, as if the lessour that maketh a lease for terme of life, say by expresse words in the lease, that the Lessee shall not be punishable of wast. And therefore if the Donour in this case had graunted to the Donee that they should not bee punishable of wast, that grant had bin void, because it was included in the gift before, as it should be vpon a gift in fee simple: and so forasmuch as by the first gift, and by the Litterie of settin made vpon the same, the Donees had authoritie by the donour to do wast; therefore though that one of those Donees be now dead without issue, so
that

The 1. Chapter.

that it is certaine, that after the death of the other, the land shall reuert to the donor: yet the authoritie that they had by the Donour to doe waite, continueth as long as the gift, and the liuery of seisin made vpon the same continueth. And I take this to be the reason why he shall not haue in aid as tenant for terme of life shall, that is to say, for that hee cannot aske helpe of that Maxim, whereby it is ordained, that a tenant for terme of life shall haue in aid: for he cannot say, but that he take a greater estate by the liuery of seisin that was made to him, which yet continueth, than for terme of life: and so I thinke him not bound to make any restitution to him in the reuersion in this case, for the worst. Do. Is thy mind only to proue that this tenant is not bound to make restitution to him in the reuersion for the waite: or that thou thinkest that he may with cleere conscience doe all manner of waite: S. I intend to proue no more but that hee is not bound to restitution to him in the reuersion. D. Then I will saye well agreed to thine opinion for the reason that thou hast made: but if thy mind had bin to haue proued that he might with cleere conscience haue done all manner of waite, I would haue thought the contrary thereto, & that the tenant in fee simple may not doe all manner of waite and destruction with conscience, as to pull down houses and make pastures of cities and towne, or to doe such other acts which be against the common-wealth. And therfore some will say, that tenant in fee simple may not with conscience destroy his woods & coale pits whereby a whole coun-
try

they for their money haue had fuel, & yet though he do so, he is not bound by conscience to make restitution to no person in certain. But now I pray thee ere thou proceed to the second case, that thou wilt somewhat shew me what thou meanest when thou saiest, at the common Law it was thus or thus: I vnderstand not fully what thou meanest by that terme, at the common Law. Sr. I shall with good will shew thee what I mean thereby.

¶ What is meant by this terme when it is said, thus it was at the Common Law.

Cap. 2.

The common law is taken three manner of waies. First it is taken as a law of this realm of England differenced from all other Lawes. And vnder this manner taken, it is oftentimes argued in the lawes of England, what matters ought of right to be determined by the common Law, and what by the Admirals Court, or by the Spirituall Court: And also if an Obligation beare date out of the realme, as in Spaine, France, or such other, it is said in the Law & truth it is, that they be not pleadable at the common law. Secondly the common law is taken as the kings courts of his Bench, or of the Common Place, and it is so taken when a plee is remoued out of ancient demesne for that the land is franke see & pleadable at the common Law, that is to say, in the Kings court, and not in Ancient demesne.

And

The 3. Chapter.

And vnder this maner taken, it is oftentimes pleaded also in these Courts, as in courts Barons, the county, and the court of Wipouers, and such other, this matter or that ac. ought not to be determined in that Court, but at the Common Law, that is to say, in the Kings Courts &c. Thirdly, by the Common law is understood such things as were law before any stat. made in that point that is in question, so that that point was holden for Law by the generall or particuler customes and Maximes of the Realme, or by the law of reason and the law of God, no other law added to them by statute, nor otherwise, as is the case before rehearsed in the first chapter, where it is said: that at the Common Law tenant by the curte sie and tenant in dower were punishable of wast, that is to say, that before any statute of wast made, they were punishable of wast by the grounds & Maximes of the law, vled before the statute made in that point. But Tenant for terme of life, or for terme of yeres, were not punishable by the said grounds and Maximes, till by the Statute remedy was given against them, and therefore it is said, that at the Common Law they were not punishable of wast. Do. I pray thee now proceed vnto the second question.

¶ The second question of the Student.

Cap. 3.

If a mā be outlawed & neuer had knowledge
of the suit, whether may the king take all his
goods

goods, & retainne them in conscience as he may by the law. D. What is the reason why they bee forfeited by the law in that case? Stu. The better reason, for that it is an old custome and an old Maxime in the law, that hee that is Outlawed shall forfeit his goods to the King, and the cause why that Maxime began, was this: when a man had done a trespassse to another, or another offence wherefore proccesse of vltarie lay, and hee that the offence was done to, had taken an action against him according to the Law, if hee had absented himselfe and had no lands, there had beene no remedy against him: for after the law of England no man shall bee condemned without answer, or that he appeare and will not answer, except it bee by reason of any Statute. Therefore for the punishment of such offenders as will not appear to make answer and to bee iustified in the Kings Court, hath beene vled without time of mind, that an attachment in that case should bee directed against him retournable in the Kings Bench or the Common place: and if it were returned thereupon that he had nought whereby hee might bee attached, that then should goe forth a Capias to take his person, and after an Alias Capias, & then a Pluries: and if it were returned vpon euerp of the said Capias that hee could not bee found and hee appeared not, then should an Exigent bee directed against him, which should haue so long a day of retourne, that five Counties might be holden befoze the retourne thereof, and in euerie of the said five Counties, the defendant to bee
for

The 3. Chapter.

solemnly called, and if hee appeareth not, then for his contumacie and disobedience of the law, the Coroners to give Judgement that he shall bee Outlawed, whereby hee shall forfeit his goods to the king, and leese diuers other advantages in the Law that needeth not here to be remembered now. And so because hee was in this case called according to the Law and appeared not, it seemeth that the King hath good title to the goods both in law and conscience.

D. If hee had knowledge of the suit in very deed, it seemeth the King hath good title in conscience as thou saiest. But if hee had no knowledge thereof, it seemeth not so, for the default that is adiudged in him (as appeareth by thine owne reason) is his contumacie and disobedience of the law, and if he were ignorant of the suit, then can there bee assigned to him no disobedience: for a disobedience implieth a knowledge of that he should haue obeyed vnto.

Sta. It seemeth in this case that hee should bee compelled to take knowledge of the suit at his perill: for sith hee hath attempted to offend the Law, it seemeth reason that he shalbe compelled to take heed what the Law will doe against him for it, and not onely that, but that he should rather offer amends for his Trespasse than to tarie till he were sued for it.

And so it seemeth the ignorance of the suite is of his owne default, specially sith in the law is set such order that every man may know if he will, what suite is taken against him, and may see the Records thereof when hee will: and so it seemeth that neither the partie nor
the

the law bee not bounden to giue him no knowledge therein. And ouer this I would somewhat more farther in this matter thus. That though that action were vnttrue, and the defendant not guiltie, that yet the goods be forfeited to the King, for his not appearance, in law, and also in conscience, and that for this cause: the King as Soueraigne and head of the Law, is bounden of Justice to graunt such writs, and such processe as be appointed in the law, to every person that will complaine, be his surmise true or false, and thereupon the King (of Justice) oweth as well to make Processe, to bring the defendant to answer, when he is not guiltie, as when he is guiltie: and then when there is a Maxime in the Law, that if a man be outlawed in such manner as befoze appeareth, that hee shall forfeit all his goods to the King, and maketh no exception. Whether the Action bee true or vnttrue. It seemeth that the said Maxime moze regardeth the generall ministracion of iustice, than the particuler right of the partie: and therefore the proprietie by the Outlawry, and by the said Maxime ordained for ministracion of iustice, is altered and is giuen to the king, as befoze appeareth, and that both in law and in conscience, as well as if the action were true. And then the partie that is so outlawed is bounden to sue for his remedie, against him that hath so caused him to be outlawed vpon an vnttrue action.

D. If he haue not sufficient to make recompence, or die befoze reuerie can be had, what remedie is had then? Sc. I thinke no remedie:
and

The 3. Chapter.

and for a further declaratiō in this case and in
such other like cases, where the proprietie of
goods may be altered without consent of the ower:
it is to consider that the proprietie of goods
is not given to the owners directly by the law
of reason, nor by the law of God, but by the law
of man, & is suffered by the Law of reason and
by the law of God to bee. For at the begin-
ning all goods were in common, but after they
were brought by the law of man into a certain
property, so that every man might know his
own: and then when such property is given by
the law of man, the same law may assigne such
conditions upon the proprietie as it liketh, so
they be not against the law of God, ne the law
of reason, and may lawfully take away that it
giveth, and appoint how long the proprietie
shall continue. And one condition that goeth
with every property in this Realme is, if hee
that hath the proprietie be outlawed according
to such proces as is ordained by the law, that
he shall forfeit the property unto the king. And
divers other cases there be also, whereby pro-
perty in goods shall be altered in the law, and
the right in Landes also without assent of the
owner, wherof I shall shortly touch some
without saying any authoritie therein, for the
more shortnesse. First by a sale in open market
the property is altered. Also goods stolen and
seised for the king, or waived, be forfeit, unlesse
appeale or indictment be sued. Also Straies, if
they bee proclaimed, and be not after claimed
by the owner within the yeare, be forfeit, & also
a Deadland is forfeit to whomsoever the pro-
per:

party was before (except it belonged to the King) that he disposed for the sale of him that was slain therewith: & a fine with a proclamation at the Common law, was a barre, if claime were not made within a yeare, as it is now by statute if the claime be not made within 5. yeares. And all these forfeitures were ordained by the law upon certaine considerations which I omit at this time, but certaine it is that none of them were made upon a better consideration than this forfeiture of Attagare was: For if no especial punishment should have bin ordained for offenders that would absent themselves & not appeare when they were sued in the Kings courts, many suits in the Kings courts should have bin of small effect. And such this Maxime was ordained for the execution of Justice, & as much done therein by the common law, as policie of man could reasonably devise, to make the party have knowledge of the suit, and now is added thereto by the Statute made the 6. yere of H. 8. that a writ of Proclamation shall be sued if the partie be dwelling in another shire: it seemeth that such Title as is given to the King thereby is in good conscience, especially seeing that the King is bound to make procelle upon the surmise of the plaintife, and may not examine but by plea of the party, whether the surmise be true or not. But if the partie be returned five times called, where indeed he was never called (as in the second case of the last Chapter of the said Dialogue in latine is contained) then it seemeth the party shall have good remedie by petition to the King, especially

The 4. Chapter.

cially if he that made the returne be not sufficient to make recompence, or by before recovery can be had. Do. Nowe such I have heard thine opinion in this case, whereby it appeareth that many things must be seene, or a full and a plain declaration can be made in this behalf, and seeing also that the plaine answer to this case, shall give a great light to divers other cases that may come by such forfeiture: I pray thee give me a farther respite, ere that I shew thee my full opinion therein, and hereafter I shall right gladly doe it. And therefore I pray thee proceed now to some other case.

¶ The third question of the Student.

Cap. 4

If a stranger doe wast in lands that another holdeth for terme of life without assent of the tenant for terme of life, whether may he in reversion recover treble damages, and the place wasted against the tenant for terme of life according to the statute, in conscience, as he may by the Law, if the stranger be not sufficient to make recompence for the wast done? D. Is the law cleere in this case, that he in the reversion shall recover against the tenant for terme of life, though that he assented not to the doing of wast? St. Pea verily, and yet if the tenant for terme of life had bene bounden in an Obligation in a certaine sum of money that hee should doe no wast, hee should not for, eit his bond be wast of a stranger, and the diversitie is this.

¶

It hath bene used as an ancient Maxime in the law, that tenant by the curtesie & tenant in dower should take the land with this charge, that is to say, that they should do no wast themselves, nor suffer none to be done: and when an action of wast was given after against a tenant for terme of life, then was he taken to be in the same case as to the point of wast, as tenant by the Curtesie, & tenant in Dower was, that is to say, that hee should doe no wast, nor suffer none to be done (for there is another Maxime in the law of England, that all cases like vnto other cases shalbe iudged after the same law as other cases be) & sith no reason of diuersity can be assigned why the tenant for terme of life after an action of wast was given against him, should haue any moze fauor in the law thā the tenant by the Curtesie, or tenaunt in Dower should: therfore he is put vnder the same maxime as they be, that is to say, that he shal do no wast, ne suffer none to be done: & so it seemeth that the law in this case doth not consider the ability of the perion that doth the wast. Whether he be able to make recompence for his wast or not, but the assent of the said tenants wherby they haue wilfully taken vpon the charge to see that no wast shalbe done. D. I haue heard that if houses of these tenants bee destroyed with sodaine tempest, or with strange enemies they shal not be charged with wast. S. Truth it is. Do. And I thinke the reason is because they can haue no recovery ouer. St. I take not that for the reason, but that it is an old reasonable Maxime in the Law, that they should

The 4. Chapter.

be discharged in these cases, howbeit some will say, that in these cases the law of Reason doth discharge them: & therefore they say, that if a Stat. were made, that they should be charged in these cases of wast, & the Statute were against reason, & not to be observed: but yet nevertheless I take it not so, for they might refuse to take such estat if they would, & if they will take the estat after the law made, it seemeth reasonable that they take it with the charge & with the condition that is appointed thereto by the Law, though hurt might follow to them afterward thereby: for it is oftentimes seen in the law, that the law doth suffer him to have hurt without helpe of the law, that will wilfully run into it of his own act not compelled thereto, & admitting it his folke so to run into it, for which folke he shal also be many times without remedy in conscience. As if a man take land for term of life, and bind th himselfe by obligation that he shal leaue the lād in as good case as he found it, if the houses bee after blowne downe with tempest, or destroyed with strange enemies, as in the case that thou hast put before, he shall be bound to repair them, or els he shal forfeit his Obligation in law & conscience: because it is his owne act to bind him to it, and yet the law would not haue bound him thereto, as thou hast said before. So mee thinketh, & the cause why the said tenants be discharged in the law in an action of wast, when the houses be destroyed by sodaine tempest, or by strange enemies, is by a special reasonable maxime in the law whereby they bee excepted from the other generall bond before

befoze reherſed, that is to ſay, they ſhall at their
 perill ſee that no waſt ſhalbe done, & not by the
 law of reaſon: & ſith there is no maxime in this
 caſe to helpe this tenant, ne that he cannot bee
 helpen by the law of reaſon, it ſeemeth that he
 ſhalbe charged in this caſe by his owne act both
 in law & conſcience, whether the ſtranger be a-
 ble to recōpence him oz not. D. I doubt in this
 caſe whether the maxime that thou ſpeakeſt of
 be reaſonable oz not, that is to ſay, & tenants
 by the curteſie, & tenants in dower were bound
 by the cōmon law, that they ſhould doe no waſt
 themſelues, and ouer that at their perill to ſee
 that no waſt ſhould be done by none other. For
 that law ſeemeth not reaſonable that bindeth a
 man to an impoſſibility. And it is impoſſible to
 puenent, & no waſt ſhall be done by ſtrangers:
 for it may be ſodenly done in the night, that the
 Tenants can haue no notice of, oz by great
 power that they be not able to reſiſt: & there-
 fore me thinketh they ought not to be charged
 in thoſe caſes for the waſt, without they may
 haue good remedie ouer, and then percale the
 ſaid maxime were ſufferable, & els me thinketh
 it is a Maxime againſt reaſon. S. As I haue
 ſaid befoze no man ſhall be cōpelled to take the
 bond vpon him, but he that wil take the land, &
 if he wil take the land, it is reaſon he take the
 charge as the law hath appointed it: and then
 if any hurt grow to him thereby, it is through
 his owne act and his owne aſſent, for he might
 haue reſuſed the leaſe: he would. D. Though
 a man may reſuſe to take eſtate for terme of life,
 oz for terme of yeeres, and a woman may reſuſe

The 4. Chapter.

to take her Dowry, yet tenant by the curtesie cannot refuse to take his estate, for immediately after the death of his wife, the possession abideth still in him by the act of the law without entry: as the 3. but the case that after the death of his wife, he would receive the possession, and after waite were done by a stranger, whether thinkest thou that hee should answer to the waite? S. I thinke he should by the law. D. And how standeth that with reason, seeing there is no default in him? St. It was his default, and at his own perill that he would marrie an inheritor, whereupon such danger might follow. D. I put case that he were within age at the marriage, or that the land descended to his wife after he married her. S. There thou mouest a farther doubt than the first question is: and though it were as thou saiest, yet thou canst not say, but that there is as great default in him, as is in him in the reversion, & that there is as great reason why hee should bee charged with the waite, as that he in the reversion should bee disinherited and haue no maner remedy, ne yet no profit of the land as the other hath: & though the said maxime may be thought very strait to the said tenants, yet it is for to bee favoured as much as may be reasonably, because it helpeth much the commonwealth: for it hurteth the commonwealth greatly, when houses & houses be destroyed: and if they should answer for no waite, but for waite done by themselves, there might be waits done by strangers by commandment, or assent, in such colozable manner, that they in the reversion should neuer haue profit

of their assent. Do. I am content thine opinion stand for this time, and I pray thee now proceed to another question.

¶ The 4. question of the Student.

Cap. y

If he that is the verie htre be certified by the Ordinarie bastard, & after bzing an action as htre against another person: whether may any man knowing the truth, be of counsell with the tenant and plead the said certificat against the demandant by conscience or not? D. Is the Law in this case that all other against whom the demandant hath title shall take advantage of this certificat, as well as he at whose suit he is certified bastard? A. Ye verily, & that for two causes, whereof the one is this. There is an old Maxim in the law, that a mischief shall be rather suffered thā an inconvenience: & then in this case if another wzt should afterward be sent to another Bishop in another action, to certify whether he were bastard or not, peradventure the bishop would certify that he were mulier, that is to say, lawfully begotten, & then he should recover as htre, & so he should in one selfe court be taken as mulier and bastard: for avoiding of which contrarietie, the law will suffer no more wzt to go forth in that case, & suffereth also all men to take advantage of the certificate, rather than to suffer such a contradiction in the court, which in law is called an inconvenience, & the other cause is, because this

The 5. Chapter.

certificat of the bishop, is the highest triall that
is in the Law in this behalfe. but this is not
vnderstood, but where bastardie is laid in one
that is party to the writ: for if bastardy be laid
in one that is a stranger to the writ, as if ben.
chee pray in ayd or such other, then that bastardy
shalbe tried by xij. men, by which triall hee in
whom the bastardy is laid, shall not be conclu-
ded, because he is not party to the triall, & may
haue acquittaint, but he that is party to the issue
may haue attaint, and therefore he shall be con-
cluded a none other but he: a forasmuch as the
said maxims were obtained to eschue an incon-
uenience (as before appeareth) it seemeth that
euery man learned, may with conscience plead
the said certificat for avoiding thereof, and give
counsaille therein to the parties according vnto
the Law: for else the said inconuenience must
needs follow. But yet neuertheless I doe not
meane thereby that the party may after when he
hath barred the demandant by the sayd certi-
ficat, retain the land in conscience by reason of
the said certificat: for though there be no Law
to compell him to restore it, yet I think wel that
hee in conscience is bound to restore it, if hee
knowe that the demandant is the very true heire,
whereof I haue put diuers cases like in the
xviij. Chapter of the first Dialogue in Latine,
but my intent is that a man learned in the law
in this case and other like, may with conscience
give his counsell according to the law, in avoi-
ding of such things as the law thinketh should
for a reasonable cause be eschewed. D. Though
hee that doth not knowe whether hee be bastard

or not, may giue his counsaile, & also plead the
 said certificat: yet I thinke that he that doth
 know himselfe to bee the verie true heire may
 not plead it, and that is for two causes: where
 of the one is this: Every man is bound by the
 law of reason to do as he would be done to, but
 I thinke that if he that pleadeth that certificat
 were in like case, he would thinke that no man
 knowing the certificat to bee untrue, might
 with conscience plade it against him, where
 fore no more may hee plead it against none o
 ther: The other cause is this, although the
 certificat be pleaded, yet is the tenant bounden
 in conscience to make restitution thereof, as
 thou hast said thy selfe, and then in case that he
 would not make restitution, then he that plea
 deth the plea, should run thereby in like offence,
 for hee hath holpen to set the other man in such
 a libertie that he may choose whether hee will
 restore the Land or not, and so hee should put
 himselfe to ieperdie of another mans consci
 ence. And it is written Ecclesiast. Qui amat
 periculum peribit in illo, that is, hee that wil
 fully will put himselfe in ieperdie to offend,
 shall perishe therein. And therfore it is the su
 rest way to etchev perils, for him that know
 eth that he is heire, not to plead it. And as for
 the inconuenient that thou sayest must needs
 follow, but the Certificat bee pleaded: As to
 that it may bee answered, that it may bee
 pleaded by some other that knoweth not that
 he is verie heire, & if the case be so far put that
 there is none other learned therein, then
 methinketh that he shall rather suffer the said
 incon-

The 6. Chapter.

Inconueniencie, than to hurt his owne conscience: for alway charitie beginneth at himselfe, and so every man ought to suffer all other offences rather than he himselfe should offend. And now that thou knowest mine opinion in this case I pray thee proceed to another question.

¶ The 5. question of the Student.

Cap. 6.

Whether may a man with conscience be of counsel with the plaintife in an action at the common law, knowing that the defendant hath sufficient matter in conscience whereby he may be discharged by a Subpœna in the Chancery, which he cannot plead at the common law, or not? Do. I pray thee put a case thereof in certain, for else the question is very general. S. I will put the same case that thou putttest in our first Dialogue in Latin, the x. Chapter, that is to say: If a man bound in an Obligation pay the money, and taketh no acquittance, so that by the common law he shalbe compelled to pay the money again, for such consideration, as appeareth in the xv. Chapter of the said Dialogue, where it is shewed evidently how the Law in that case is made by a good reasonable ground, much necessary for all the people, howbeit, that a man may sometime through his owne default, take hurt thereby, wherein I pray thee shew me thine opinion. D. This case seemeth to be like to the case that thou hast next before this, & that he that knoweth the payment to be made doth not as he would be done to, if he giue counsell that an action should bee taken to haue it payed againe.

gaine. S. If hee bee sworne to giue counsell according to the Law, as Sericants at the law bee, it seemeth he is bound to giue counsell according to the Law, for els he should not per-
 forme his oath. Do. In these words (according to the Law, is vnderstood the law of God, and the law of reason, aswel as the law & customes of the Realme, for as thou hast said thy selfe in our first dialogue in latin, that the law of God, and the law of reason, be two speciall grounds of the laws of England, wherfore (as me thinketh) he may giue no counsell (swearing his oath) neither against the law of God, nor the law of reason. And certaine it is that this article, that is to say, If a man shall do as he would be done to, is grounded vpon both the said lawes. And first that it is grounded vpon the Law of reason, it is euident of it selfe. And in the 6. Chapter of Saint Luke, it is said, Et prout vultis vt faciant vobis homines, & vos facite illis similiter, that is to say, All that other men should do to you, do you to them, & so it is grounded vpon the Law of God, wherfore if he should giue counsell against the defendant in that case, hee should do against both the said lawes. S. If the defendant had no other remedy but the common law, I would agree wel it were as thou saist, but in this case he may haue good remedy by a Subpœna, and this is the way that shall induce him directly to his Subpœna, that is to say, when it appeareth that the Plaintiff shall recover by Law. Doct. Though the Defendant may bee discharged by Subpœna, yet the bringing in of his proofes there, will be to the charge of

The 7. Chapter.

of the defendant, and also the proofes may dye
oz they come in. Also there is a ground in the
law of reason, *Quod nihil possumus contra ve-*
ritatem, (that is) wee may doe nothing against
the trueth, and sith he knoweth it is trueth that
the money is paid, he may do nothing against
the trueth, and if he should bee of counsell with
the plaintife, he must suppose and avierre that
it is the very due debt of the plaintife, and that
the defendat withholdeth it from him unlaw-
fully, which he knoweth himselfe to be untrue:
wherefoze hee may not with conscience in this
case be of counsell with the plaintife, knowing
that the plaintife is paid already, wherefoze if
thou bee contented with this answer, I pray
thee proceed to some other question. St. I will
with good will.

¶ The 7. question of the Student.

Cap. 7.

A Man maketh a feoffemēt to h^e ble of him,
& of his heirs, & after the feoffoz putteth
in his beasts to manure the ground, & the
feoffee taketh thē as damages felonant, & putteth
thē in pound, & the feoffoz bringeth an action of
trespas against him for entring into his ground
ec. whether may any man knowing the sayde
ble, be of counsell with the feoffee to avoid the
action? D. May he by the common law avoid
that action, seeing that the feoffoz ought in con-
science to have the profits? S. Yes verily, for as
to the Common Law the whole interest is in
the

the feoffee, & if the feoffee will breake his conscience, and take the profits, the feoffour hath no remedy by the common Law, but is diuened in that case to sue for his remedy by Subpena for the profits, and to cause him to relesse him againe, & that was sometyme the most common case where the Subpena was sued, that is to say, before the Statute of R. 3. but since the Statute, the feoffor may lawfully make a feffement. But neuerthelesse for the profits received, the feoffor hath yet no remedy but by Subpena as he had before the said statute. And so the supposell of his action of trespass is vnttrue in every point, as to the common law.

D. Though the actiō be vnttrue, as to the law yet he that sueth it ought in conscience to haue that he demandeth by the action, that is to say, damages for his profits, and as it seemeth no man may with conscience giue counsel, against that he knoweth conscience would haue done.

St. Though conscience would he should haue the profits, yet conscience will not that for the attaining thereof the feoffour should make an vnttrue surmise. Therefore against the vnttrue surmise every man may with conscience giue his counsell, for in that doing hee resisteth not the plaintiffe to haue the profits, but hee withstandeth him that hee should not maintaine an vnttrue action for the profits. And it sufficeth not in the Law, ne yet in conscience as we lea-
 nerth, that a man hath right to that hee sueth for, but that also hee sue by a iust meanes, and that hee hath both good right, and also a good and a true conueiance to come to his right: for
 if

The 7. Chapter.

If a man haue right to lāds, as heire to his fa-
ther, and he wil bring an action as heire to his
mother that neuer had right, euery man may
giue counsell against the actiō, though he know
hee haue right by another meanes, & so as men
thinketh he may do in dilatores, whereby the
partie may take hurt if it were not pleaded,
though he know the plaintife haue right: as if
the party or the towne be misnamed, or if the
degrees in writs of Entry be mistake, but if
party should take no hurt by admitting of a di-
latory, there hee that knoweth that the plain-
tife hath right, may not plead that dilatorie
with conscience: As in a Formedon to plead in
Abatement of the writ, because hee hath not
made himselfe heire to him that was last seised,
or in a writ of Right for that the demandant
had omitted one pretended right, ne such other,
ne he may not assent to the casting of an essoin,
nor protection for him, if hee know that the de-
mandant hath right, ne hee may not vouch for
him, except it be & he knoweth that the tenant
hath a true cause of a voucher, & of lien, & that
hee doth it to bring him thereto, & in like wise
he may not pray in aid for him, vnles he know
the praye haue good cause of voucher & lien o-
uer, or that he know that the praye hath some-
what to plead that the tenant may not plead,
as villaine in the demandant, or such other. D.
Though the plaint. f. hath brought an action
that is untrue & not maintainable in the Law,
yet the defendant doeth wrong to the plaintife
in the withholding of the profits aswell before
the action brought as hanging the action, and
that

that wrong as it seemeth the counsaillor doeth maintaine, & also sheweth himselfe to fauor the partie in that wrong when he giueth counsaile against the action. **Sc.** If the plaintife doe take that for a fauor & a maintenance of his wrong, he iudgeth farther than the cause is giuen, so that the counsaillor doe no more but giue counsaile against the action, for though hee giue him counsaile to withstand the action for the vntuth of it, and that hee should not confesse it & to make thereby a fine to the King without cause, yet it may not stand with reason that hee may giue counsell to the partie to peeld the profits: and therefore I thinke he may in this case be of counsaile with him at the common Law, and be against him in the Chauncerie, and in either Court giue his counsaile without any contrarietie, or hurt of conscience. And vpon this ground it is, that a man may with good conscience bee of counsaile with him that hath Land by descent, or by discontinuance without title, if he that hath the right bring not his action according to the Law, for the recovering of his right in that behalfe.

¶ The seuenth question of the Student.

Cap. 8.

If a mā take distress for debt vpon an obligation, or vpon a contract, or such other thing & he hath right title to haue, but & he ought not by the law to distrain for it, & neuertheless he keepeth

The 8. Chapter.

eth the same distresse in pound till he be paid of his duty, what restitution is he bound to make in this case? Whether shall he pay ſ money because he is come to it by an vnlawfull means, or onely to restore the party for the wrongfull taking of the distres, or to neither; I pray you shew me? Do what is the law in this case? S. That he that is distrained may bring a speciall action of trespassse against him & distraineth, for & he tooke his beasts wrongfully, and kept the till he made a fine, & therfore he shal recover the fine in damages, as he shal do for the residue of trespass: for the taking of the money by such compulsion is take in the law but as a fine wrongfully taken, though it be his duetie to haue it. D. Yet though he may so recover, mee thinketh th it as to the repayment of the money he is not bound thereto in conscience, so that he take no more thā of right he ought to haue, for though hee came to it by an vnlawfull meane, yet when money is paid him it is his of right, & he is not bound to repay it, vnles it be recovered as thou saidst, & then when he hath repaid it, he is as mee thinketh restored to his first action: but to the redeliuery of the beasts with such damages & such hurt as he hath by the distres, I suppose he is bound to make recōpēce of thē in cōscience without compulsion or iur in the law: for though hee might lawfully haue sued for his duetie in such maner as the law hath ordred, yet I agree well that he may not take vpon him to bee his owne iudge, and to come to his duty against the order of the Law, and therefore if any hurt come to the party by the disorder, he is bound to
rele: e

restore it. But I would think it were the more
 doubt if a man take such a distresse for a tres-
 pas done to him, and keepeth the distres till as-
 mends be made for the trespass: for in that case
 the damages be not in certain, but be arbitra-
 ble either by the assent of the parties or by 12.
 me: and it seemeth that there is no assent of the
 partie in this case, specially no free assent, for
 that he doth is by compulsion and to haue his
 distres againe, and so his assent is not much to
 be pondered in that case, for all his assenting of
 him that take the distresse, & so hee hath made
 himselfe his owne Judge and that is prohibi-
 ted in all lawes: but in that case where the di-
 stres is taken for debt, he is not his own iudge
 for the debt was iudged in certaine before by
 the first contract, and therefore some thinke
 great diuersitie betwixt the cases. St. By that
 reason it seemeth, that if hee that distraineth in
 the first case for the debt take any thing for his
 damages, that he is bound in conscience to re-
 store it againe, for damages be arbitrable, and
 not certaine no more than trespass is, & me see-
 meth that both in the case of trespass and debt,
 he is bound in conscience to restore that he ta-
 keth, for though he ought in right to haue like
 sum as he receiveth, yet hee ought not to haue
 the money that he receiveth, for he came to the
 money by an vnjust meanes, wherefore it
 seemeth he ought to restore it againe. D. And if
 hee should be compelled to restore it againe,
 should hee not yet (for that he receiued it once)
 be barred of his first action notwithstanding
 the payment?

The 9. Chapter.

S. I will not at this time cleerely assaile thee that questiō, but this I will say, that if any hurt come to him thereby, it is throught his owne default, for that he would do against the law: but neuerthelesse a little I will say to thy questiō, that as mee seemeth when hee hath repayed the mony, that he is restozed to his first action. As if a man condemned in an actiō of trespass pay the money, and after the defendant reuerse the iudgement by a writ of Error, and haue his money repaid, then the plaintife is restozed to his first action. And therefore if he that in this case tooke the mony, restoze that he tooke by the wrongfull distresse, or that he sizered the matter so liberally, that the other murmure not, ne complaine not at it, me seemeth he did very wel to be sure in conscience: and thereloze I would aduise euerie man to bee well ware how he distraineth in such cases against the law. D. Thy counsel is good, & I note much in this case that the party may haue an actiō of trespass against him that distraineth, so that hee is taken in the law but as a wrong doer, & therefore to pay the mony againe is the sure way, as thou hast said before. And I pray thee now shew me for what a man may lawfully distrain as thou thinkest.

¶ For what thing a man may lawfully distraine.

Cap. 9.

A Man may lawfully distraine for a Rent service, and for all maner of seruices, as homage,

image, fealtie, Vicinage, suit of Court, reliefes, and such other. Also for a rent reserved upon a gift in taile, a lease for terme of life, for yeeres, or at will, if he reserve the reversion, the feoffor shall distraine of common right, though there bee no distresse spoken of. But in case a man make a feoffment and that in fee by Indenture, reserving a rent, he shall not distraine for that rent unless a distresse be expressly reserved: and if the feoffment bee made without a deed reserving a rent, that reservation is void in Law, and hee shall have the rent only in conscience, and shall not distraine for it. And like Law is where a gift in taile or a Lease for terme of life is made, the remainder over in fee reserving a rent, that reservation is void in law.

Also if a man seised of land for terme of life graunteth away his whole estate, reserving a rent, that reservation is void in the Law, without it be by Indenture, and if it be by Indenture, yet hee shall not distraine for the rent but a distresse bee reserved. Also for Amerciament in a Leete, the Lord shall distraine. But for Amerciament in a Court baron he shall not distraine.

Also if a man make a lease at Michaelmas for a yeare, reserving a rent payable at the feast of the Annuntiation of our Lady and Saint Mich. the Archangell, in that case hee shall distraine for the rent due at our Lady day, but not for the rent due at Michaelmas, because the terme is expired.

But if a man make a Lease at the feast of

The 9. Chapter.

Christmas for to endure to the feast of **C**hristmas next following, that is to say, for a yeare reseruing a rent at the foresaid feast of the Annuntiation of our Ladie and **S**aint Michael the Archangell, there hee shall distraine for both the rents, as long as the terme continued, that is to say, till the foresaid feast of **C**hristmas.

And if a man haue Land for terme of life of **J**ohn at **P**oke, and maketh a lease for terme of yeares reseruing a rent, the rent is behind, and **J**ohn at **P**oke dieth, there he shall not distraine because his reuerſion is determined.

Alſo if he to wholeſole ſellors bin ſelleſed maketh a lease for terme of yeares, or for terme of life, or a gift in taile reseruing a rent, there the reſeruation is good and the leſſour ſhall diſtraine.

And if a toſwneſhip be amerced & the neighbours by aſſent aſſeſſe a certaine ſumme vpon every inhabitant, & agree that if it be not paid by ſuch a day, that certaine perſons thereto aſſigned ſhall diſtraine: In this caſe the diſtreſ is lawfull. If **L**ord and **T**enant bee, and if the tenant do hold of the **L**ord by ſealitie and rent, and the **L**ord both graunt away the ſealitie reſeruing the rent, and the tenant attourneth, in this caſe, hee that was **L**ord may not diſtraine for the rent, for it is become a rent ſecke. But if a man make a gift in taile to another, reſeruing ſealitie & certaine rent, and after that hee graunteth away the ſealitie reſeruing the rent and the reuerſion to himſelfe, in this caſe hee ſhall diſtraine for the rent, for the graunt of the ſealitie

fealtie is boide, for the fealtie cannot bee severed from the reuerſion. Also for heriot ſervice the Lord ſhall diſtraine, and for heriot cuſtome he ſhall ſeiſe and not diſtraine. Also if a rent be assigned to make a partition or assignment of Dowry egall, hee or ſhee to whom the rent is assigned may diſtraine: and in all theſe caſes a-boueſaid, where a man may diſtraine, hee may not diſtraine in the night, but for damages ſealant, that is to ſay, where beaſts doe hurt in his ground he may diſtrain in the night. Also for waſtes, for reparations, for accompts, for debts upon contracts, or ſuch other, no man may lawfully diſtraine.

¶ The 8. queſtion of the Student.

Cap. 10.

If a man doe trespaffe, and after make his Executors, and die befoze any amends made: Whether be his executors bound in conſcience to make amends for the trespaffe if they haue ſufficient goods thereto, though there be no remedy againſt them by the law to compel them to it? Doct. It is no doubt but they are bound thereto in conſcience, befoze any other deed in charity, that they may do for him of their owne deuotion. St. Then would I wit, if the teſtator made Legacies by his will, whether the executors be bound to doe firſt, that is to ſay, to make amends for the trespaffe, or to pay the Legacies, in caſe they haue no goods to doe both? D. To pay legacies: for if they ſhould firſt

The 10. Chapter.

make recompence for the Trespasse and then haue not sufficient to pay the Legacies, they should be taken in the law as walkers of their testators goods: so that they were not compellable by no law to make amends for the trespass, because euery trespass dyeth with the person, but the legacies they should bee compelled by the Law spiritual to fulfill, and so they should bee compelled to pay the Legacies of their owne goods, and they shall not be compelled thereto by no law ne conscience: but if the case were that he leaue sufficient goods to doe both, then we thinketh they be bound to do both, and that they be bound to make amends for the Trespasse, before they may doe any other charitable deed for the Testator of their owne mind, as I haue said before, except the funeral expences that be necessary, which must be allowed before all other things. S. And what the pzoouing of the Testament.

D. The Ordinary may nothing take by conscience therfore, if there be not sufficient goods besides for the funerals, to pay the debts, & to make restitution. And in likewise the Executors be bound, to pay debts vpon a simple contract, before any other deed of charitie, that they may doe for their Testator of there owne deuotion; though they shall not bee compelled thereto by the Law. S. And whether thinketh thou that they bee bound to doe first, that is to say, to make amends for the trespass, or to pay the debts vpon a simple contract. Do. To pay the debts, for that is certaine and the trespass is arbitrable.

S. Then

Sr. Then for the plainer declaration of this
 matter and other like, I pray thee shew me thy
 mind, by what law it is, that if a man make ex-
 ecutors, and that the executors, if they take
 upon them, be bound to performe the will, and
 dispose the goods that remaine for the Testa-
 tor. D. I thinke that it is best by the law of
 reason. S. And me thinketh that it should bee
 rather by the custome of the Realme. D. In all
 Countries and in all lands they make Execu-
 tors. S. That seemeth to be rather by a generall
 custome, after that the law and custome of pro-
 pertie was brought in, than by the law of rea-
 son: for as long as all things were in common,
 there were no executors ne wills, ne they nee-
 ded not them, and when property was after
 brought in, me thinketh that yet making of ex-
 ecutors, and disposing of goods by will, after a
 mans death, followeth not necessarily therupō:
 for it might have bin made for a law, that a mā
 should have had the property of his goods one-
 ly during his life, & that then his debts payed,
 all his goods to have beene left to his wife and
 children, or next of his kin, without any lega-
 cies making thereof, and so might it now bee
 ordained by statute, and the statute good & not
 against reason: wherfore it appeareth that exe-
 cutors have no authoritie by the Law of rea-
 son, but by the Law of man. And by the old
 Law and custome of the Realme a man may
 make executors and dispose his goods by his
 will, and then his executors shall have the ex-
 ecution thereof, and his heires shall have no-
 thing, but if any particuler custome helpe: and

The 10. Chapter.

the executors shall also haue the whole possession, and disposition of all his goods & chattels aswell reall as personal, though no word be expressly spoken in the will, that they shall haue them: and they shall haue also actions or recover all debts due to ^h testator, though all debts & legacies of the testator be paid before, & shall haue the disposition of them to the vse of the testator, & not to their own vse: and so me thinketh that the authority to make executors, and that they shall dispose the goods for the testator, is by the custome of the Realme: but then I thinke as thou saiest, that by the Law of God they shall be bound to doe the first, that is to the most profit of the soule of their testator where the disposition thereof is left to their discretion, and that I agree well, is to pay debts vpon contracts, & to make amends for wrong done to ^h testator, though they bee not compelled thereto by the law & custome of the realme, if there be none other debt nor legacie that they be bound to pay by the law: but if two severall debts be payable by the Law, then which debt they shal do first in conscience, I am somewhat in doubt. D. Let vs first know what the common law is therein. S. The common law is, if the Testator owe x.l. to two men severally by Obligation, or by such other manner that an action lyeth against his Executors thereof by the Law, and hee leaueth goods to pay t^he one and not both, that in that case hee that can first obtaine his Judgement against the Executors, shall haue execution of the whole, and the other shall haue nothing, but to which of them

them he shall in conscience owe his favour, the common Law teacheth not. Do. Therein must be considered the cause why the debts began, & then he must after conscience, beare his lawfull favour to him who hath the clearest cause of debt, and if both have like cause, then in conscience he must beare his favour where is most neede and greatest charitie.

St. May the executors in that case delay that action that is first taken, if it stand not with so good conscience to be paid, as another debt whereof no action is brought, and procure that an action may be brought thereof, and then to confesse that action, that he may so have execution, and then the executors to be discharged against the other? D. Why may he not in that case pay thother without action, and so be discharged in the law against the first?

Stu. No verily, for after an action is taken, the executor may not minister the goods so, but that hee leave so much as shall pay the debt, whereof the action is taken: and if he doe not, hee shall pay it of his owne goods, except another recover, and have Judgement against him hanging that action, and that without co-
min.

D. Then to answer to thy question, I thinke that by delays that be lawfull, as by Crosse, Compellance, or by dilatorie plea in abatement of the writ that is true, he may delay it: but he may plead no untrue plea to preferre the other to his duetie. But I pray thee, what is the law of legacies, restitution, & debts, upon contracts, that percase ought rather after charitie
to

The 10. Chapter.

to be paid than a debt vpon an obligation, What may the fauor of the Executo: doe in these cases? S. Nothing, for they either perforce legacies, make restitutions, or pay debts vpon contracts, and keepe not sufficient to pay debts which they are compellable by the law to pay, that shalbe taken as a Deuassauerunt bona re-
 fectores, that is to say, That they haue wasted the goods of their testator: and therefore they shalbe compelled to pay the debts of their own goods: so it is if they pay a debt vpon an obligation, whereof the day is yet to come, though it be the cleere debt, and that be the moze charitable to haue it paid. D. Yet in that case if hee to whom the debt is already owing, forbere till after the day of the other obligation is past, then he may pay him without danger. S. That is true, if there be no action taken vpon it, and though there be, yet if that action may bee delayed by lawfull meanes, as thou hast spoken of before, till after the day, and that an action is taken vpon it, then may the executors confesse the action, and then after Iudgement hee may pay the debt without danger of the law. D. Is not that confession of the action so done of purpose, a couin in the law? S. No verily, for couin is where the action is vnttrue, & not where the Executors beare a lawfull fauor. Do. The Ordinarie vpon the accompt in all the case before rehearsed, will regard much what is best for the Testator. Sr. But hee may not drue them to accompt against the order of the common Law.

The

¶ The 9. question of the Student.

Cap. 11.

A Man is indebted to another by a simple contract in 20. l. & he maketh his will & bequeatheth 20. l. to B. Part of which, and leaveth goods to his executors only to burye him with, and to performe the said legacie, and after the said executors deliver the goods of their Testatour in performance of the said bequest: whether is hee to whom the bequest is made, bound in conscience to pay the said debt vpon the simple contract, or not? D. Is hee not bound thereto by the Law? S. No verily. D. And what thinkest thou hee is in conscience? S. I thinke that he is not bound thereto in conscience, for hee is neither Ordinarie, Administratour, nor Executour. And I haue not heard that any man is bound to pay debts of any man that is deceased, but hee be one of those three: for the goods that the testator left to the executors were neuer charged with the debt, but the person of the Testatour while he liued was onely charged with the debt, and not his goods, and his executors that represent his estate after his death, having goods there to of the testators, be charged also with the debts, and not the goods. And therefore if an Executor giue away or sell all the goods of the Testatour, or otherwise waite them, hee that hath the goods is not charged with the debts in Law nor conscience, but the Executor shall bee charged of his owne goods.

The 11. Chapter.

goods. And in likewise if Jo. at Stoke owe to A. B. xx. l. and A. B. oweth to C. D. xx. l. and after A. B. dyeth intestate hauing none other goods but the said xx. l. which the said John at Stoke oweth him, yet the said C. D. shall haue no remedie against the said Jo. at Stoke, for he standeth not charged to him in Law nor conscience. But the Ordinarie in this case must commit Administration of the goods of the sayd A. B. And the said Administrator must leuy the mony of the said John at Stoke, and pay it to the said C. D. and the said John at Stoke shall not pay it himselfe, because hee is not charged therewith to him: and no more mee thinketh in this case, that he to whom the bequest is made, is neither charged to him that the money was owing to, in the Law or conscience. Do. Then shew me thy mind by what law it was groundes as thou thinkest Executors be bound to pay debts before legacies: whether it is by the law of God, or by the law of reason, or by the Law of man, as thou thinkest. I thinke that it is both by the law of reason, & by the law of God: for reason wil that they shal doe first that is best for the testator, and that is to pay debts that their testator is bound to pay, before legacies, that hee is not bound to. And also by the law of God, they are bound to pay the debts first: for such they are bound by the law of God to loue their neighbour, they are bound to do for him that shall be best for him, when they haue taken the charge thereto, as Executors doe when they agree to take the charge of the will of their Testator
upon

upon them: and it is better for the testator, than his debts be paid (wherefore his soule shall suffer paine) than that his legacies be performed, wherefore hee shall suffer no paine for the performing of them.

And that is to bee understood, where the legacie is made of his own free will, & not where it is made as a satisfaction of any duettie. And after the saying of S. Gregorie, the verie true proufe of lone is the deed. But this man is not in that case, for he tooke neuer the charge vpon him to pay the debts of the Testator, and therefore he is not bound to them in Law nor conscience as me seemeth: But rather the executors should haue bin ware ere they had paid the legacies, seeing there were debts to pay.

D. The Executors might no otherwise haue done in this case, but to pay the Legacies: for the they should haue been compelled by the Law to haue paid, and so they could not haue bin so bound to pay the debt vpon a contract, and therefore they did well in performing of that legacy but hee to whom the legacie was made ought not to haue taken them, but ought in conscience to haue suffered them, to haue gone to the payment of the debt, and sith he did not so, but tooke them where he had no right to them, it seemeth that when hee tooke them, he tooke with them the charge in conscience to pay the debt: for sith the executors were compellable by the Law to performe that bequest and not pay the debt, therefore when they performed that bequest, they were discharged thereby against him that the debt was owing to, in the Law and conscience

The 11. Chapter.

science, and then the charge resteth vpon him that tooke the goods where he ought not in conscience to haue taken them: but if it had been a debt vpon an Obligation, or such other debt, whereupon remedie hath been had against the executors by the law, I there suppose though that the executors had performed the Legacie, that yet he to whom the legacie was made and performed, had not bene charged in conscience to the payment of the debt, for the Executors stood still charged thereto of their own goods: and hee to whom the bequest was made was only bound in conscience to repay that hee receiued, to the Executors, because he had no right to haue receiued it, for against the Executors he had no right thereto. *Seu.* Then it seemeth in this case that in likewise he to whom the bequest was made, should repay that hee receiued to the Executors, and then they to pay it rather then hee. *D.* The executors haue no farther meddling with it as this case is, for when they performed the bequest, they were discharged against both the other in Law and conscience, & also he to whom the bequest was made, stood not in this case charged to the executors: for against them he had good title by the Law, and so this charge standeth onely against him that the debt is owing to: and the same Law that is in this case vpon a debt vpon a contract is if the testator had done a trespass whereupon he ought to haue made restitution, that is to say, that hee to whom the bequest is made, is bound to make the amends for the Trespass: for it should bee no discharge to him to pay

pay it againe to the Executors without they paid it ouer, & it were vncertaine to him whether they should pay it or not.

And therefore to be out of perill, it is necessarie that he pay it himself, and then he is safely discharged against all men.

¶ The 10. question of the Student.

Cap. 12.

A Man seiled of certain lād in his demesne as of fee, hath issue two sonnes and dieth se'ed, after whose death a stranger abducth, & taketh the profit, and after the eldest son dyeth without issue, and his brother bringeth an Assise of Mortdauncestar as sonne and heire to his father, not making mention of his brother, and recovereth the Land with damages from the death of his father, as he may well by the Law: whether in this case is the younger brother bound in conscience, to pay to the Executors of the eldest brother, the value of the profits of the said Land, that belonged to the eldest brother in his life, or not? Doct. what is thine opinion therein? S. That like as the said profits belonged of right to the eldest brother in his life, and that hee had full authoritie to bene released aswel the right of the said Land, as of the said profits, which release should haue bene a cleere barre to the younger brother for ever: That the right of the said damages which

The 12. Chapter.

Which bee in the Law but a chattell, belong to his executors and not to the heire: for no manner of chattell neither reall noz personall shall not after the law of the realm descend vnto the heire.

D. Thou saidst in the case next before, that it is not of the Law of reason, that a man shall make executors, & dispose of his goods by his will, & the executors shall have the goods to dispose, but by the law of man: And if it be left to the determination of the law of man, That in such cases as the law giueth such chattels vnto the Executors, they shall have good right vnto them, and in such cases as the Law taketh such chattels from them, they beene rightfully taken from them: And therefore it is thought by many, that if a man sue a Writ of right of Ward of a Ward that hee hath by his owne fee, and dieth hanging the writ, and his heire sue a Returnons according to the Stat. of West. second, and recouereth: that in that case the heire shall enjoy the wardship against the executors, and yet it is but a chattell: and they take the reason to bee, because of the sayde statute, and so might it bee ordained by statute that all wards should go to the heires, and not to the Executors: Right so in this case, sith the Law is such, that the yonger brother shall in this case haue an Assise of Mortdauncestour as heire to his father, not making any mention of his elder brother, and recouer damages aswel in the time of his brother, as in his owne time: It appeareth that the Law giueth the right of these damages to the heire, and there-
fore

for no recompence ought to bee made to the executors, as me seemeth: & it is not like to a writ of *Wiel*, where as I haue learned in latine (with our first dialogue) the demandant shall recover damages only from the death of his father, if he ouerline the *Wiel*: & the cause is, for that the demandant, though his *Wiel* ouerliued his father, must of necessity make his conueyance by his father, and must make him selfe son & heire to his father, & cōlin and heire to his *Wiel*: and therefore in that case if the father ouerliued the *Wiel*, the abatoz were bounden in conscience to reſtoze to the executors of the father the profits run in his time (for no Law taketh them from him) but otherwise it is in this case, as me seemeth. *St.* If the younger brother in this case had entred into the land without taking any assise of Mortdancerst as he might if hee would, to whom were the abatoz then bounden to make restitution for those profits as thou thinkest? *D.* To the executors of the eldest brother: for in that case there is no law that taketh them from them, & therefore the generall ground, which is that all chattels shall goe to the executors, holdeth in that case: but in this case that ground is broken and holdeth not, for the reason that I haue made befoze. For commonly there is no generall ground in the Law so sure, but it faileth in some particuler case.

¶ The 11. question of the Student.

Cap. 13.

A Man seised of land in fee, taketh a wife, and after alieneth the land, & dyeth, after whose death

The 13. Chapter.

death his wife asketh her dower, & the alienee refuseth to assigne it vnto her, but after she asketh her Dower again, and he assigneth it vnto her: whether is the alienee in this case bound in conscience, to give the woman damages for the profits for the Land after the third part, from the death of her husband, or from the first request of her Dower, or neither the one nor the other? D. What is the law in this case? Stu. By the law the woman shall recover no damages, for at the Common law the demandant in a writ of Dower, should never have recovered damages: but by the Statute of Merton it is ordeined, that where the husband dieth seised, that the woman shall recover damages, which is vnderstood the profits of the Land sith the death of her husband, and such damages as she hath by the forbearing of it: but in this case the husband died not seised, wherefore she shall recover no damages by the Law. D. Yet the Law is, that immediatly after the death of her husband the wife ought of right to haue her dower if shee aske it, though her husband die not seised. S. That is true.

Do. And sith shee ought to haue her Dower from the death of her husband, it seemeth that shee ought in conscience to haue also the profits from the death of her husband, though shee haue no remedie to come to them by the Law: For me thinketh that this case is like to a case that thou puttest in our first Dialogue in Latin, the 17. Chapter: That if a tenant for terme of life be disseised and dye, and the disseisor dye, and his heire entreth and taketh the profits,

sit, and after he in the reuerſiō recovereth the
 lands againſt the heire, as hee ought to doe by
 the Law, that in that caſe hee ſhall recover no
 damages by the Law: and yet thou diddeſt a-
 gree, that in that caſe the heire is bound in cō-
 ſcience to pay the damages to the demandant,
 and ſo mee thinketh in that caſe, that the feoffee
 ought in conſcience to pay the dammages from
 the death of her husband, ſeeing that immedi-
 atly after his death ſhe ought to have her dow-
 er. **St.** Though ſhe ought to bee indowd im-
 mediately after the death of her husband, yet
 ſhee can lay no default in the feoffee till ſhe de-
 mand her dower by the ground, and that the
 tenant be not there to aſſigne it, or if he be there
 that he will not aſſigne it: for hee that hath the
 poſſeſſion of land whereunto any woman hath
 title of dower, hath good authoritie as againſt
 her to take the profits till ſhe require her dower
 for euery woman that demandeth dower aſ-
 firmeth the poſſeſſion of the tenant as againſt
 her: and therefore although ſhe recover by ac-
 tion, ſhee leaueth the reuerſion alway in him a-
 gainſt whom ſhe recovereth, though he be a diſ-
 ſeiſor, and bringeth not the reuerſion by her re-
 couerie to him that hath right as other tenants
 for terme of life doe. And for this reaſon it is
 that the tenant in a writ of Dower, where
 the husband dyed ſeiſed, if hee appeare the firſt
 day, may ſay to excuſe himſelfe of dammages
 that hee is and all times hath bene readie to
 pay Dower if it had been demanded: and ſo
 he ſhall not be retained to do in a writ of Coſti-
 nage, neither in the caſe that thou rememberſt

The 13. Chapter.

above, for in both cases the tenants be supposed
 by the writ to be wrong doers: but it is not
 so in this case, & so me thinketh it clear that the
 feoffor in this case shall never be bound by law,
 nor conscience to pay damages for the time he
 passed before the request, but for the time after
 the request is greater doubt: howbeit some
 think him there not bound to pay damages, be-
 cause his title is good, as is said before, & that
 it is her default that she brought not her action.
 D. As unto the time before the request I hold
 me content with thine opinion, so that he assign
 the dowry when he is required, but when hee
 refuseth to assigne it, then I thinke him bound
 in conscience to pay damages for both times,
 though she shall none recover by the law. And
 first as for the time after the refusal, it appea-
 reth evidently that when hee denied to assigne
 her dowry, he did against conscience: for he did
 not he ought to have done by the law, ne as he
 would should have bin done to him, & so after he
 request he holdeth her dowry from her wrong-
 fully, and ought in conscience to pay damages
 therfore. And as to he default that thou assignest
 in her, that she took not her action, hee forceth lit-
 tle, for actions need not, but where the party will
 not do that he ought to do of right. And for that
 he ought of right to have done & did it not, hee
 can take no advantage: and then as to the da-
 mages before the request, me thinketh him also
 bounden to pay them, for when he was requi-
 red to assigne dowry & refused, It appeareth
 that he never intended to pay dowry from the
 beginning, & so he is a wrong doer in his own
con-

conscience: & moreover if the husband die seised, the law is such, that if the tenant refuse to assign dowter when he is required, wherfore the woman bringeth a writ of dowter against him, that in þe case the woman shal recover damages aswel for þe time befoze þe request as after: yet he ought not in that case after thine opinion to have payed any manner of damages if hee had bin ready to assign dowter when it was demanded, as some thinketh here. St. The cause in the case that thou hast put, is for that the statute is general that the demandant shal recover damages, where þe husband dyed seised, & that statute hath bin alway construed, þe where the tenant may not say, þe hee is, & hath bin ready alway to payd dowter at. þe the demandant shall recover damages from the death of her husband. But in that case there is no law of the realme, þe helpeth for the demandant neither comon law, nor statute: & furthermore though it might be proved by his refusal, þe he never intended from the death of the husband to assigne her dowter, yet that proueth not, but that he had good right to take the profits of her third part for the time, aswell as behad of his owne two parts, till request be made, as is aforesaid: & some thinketh þe notwithstanding the deniall, he is not bound to payd damages in this case, but for the time of the request, & not for the time befoze. D. For this time I am content with thy reason.

¶ The 12. question of the Student.

Cap. 14.

A Man seised of certain lāds, knowing that another hath good right & title to them, le-
 A 3 nieth

The 14. Chapter.

nieth a fine with Proclamation, to the intent
 hee would extinct the right of the other man, &
 the other man maketh no claime within the y.
 yeares, whether may hee that leuied the fine
 hold the land in conscience as he may do by the
 law? D. By this question it seemeth that thou
 dost agree, that if he that leuied the fine had
 no knowledge of the other mans right, that
 his right should then bee extincted by the fine
 in conscience. Sr. Wea verily, for thou biddest
 shew a reasonable cause why it should bee so in
 our first Dialogue in Latine the 24. Chapter,
 as there appeareth. But if he that leuied a fine
 and that would extinct the right of another,
 knew that the other had more right than hee,
 then I doubt therein: for I take thine opini-
 on in our first Dialogue to bee understood in
 conscience, where he that would extinct former
 rights by such a fine with proclamation, know-
 eth not of any former title, but for his most
 surety, if any such former right be, he taketh the
 remedy that is ordained by the law. Do. whe-
 ther dost thou meane in this case that thou
 puttest now that hee that hath right, knoweth
 of the fine, wilfully letting the fine yeares passe
 without claime, or that hee knoweth not any
 thing of the fine.

S. I pray thee let mee know thine opinion
 in both cases, and whether thou thinke that
 hee that hath right bee barred in either of the
 said cases by conscience as he is by the Law,
 or not. Do. I will with good will hereafter
 shew thee my mind therein: but at this time
 I pray thee give a little sparing and proceed
 now

now for this time to some other question.

¶ The 13. question of the Student.

Cap. 15.

A Man seised of certain lands in fee hath a daughter, which is his heire apparat, the daughter taketh a husband, & they haue issue, the father dieth seised, and the husband as soone as he heareth of his death, goeth to ward the land to take possession, & befoze he cā come there, his wife dieth, whether ought he to haue the lād in conscience for term of his life, as tenant by the curtesie, because he hath done that in him was to haue had possess. in his wifes life, so that hee might haue bin tenant by the curtesie accordyng to the Law, or that he shall neither haue it by the law, nor conscience? D. It is cleerely holden in the law that he shall not be tenant by the curtesie in this case, because hee had not possession in deed.

S. Ye verily, and yet vpon a possession in law a woman shal haue her dower, but no man shal be tenant by the curtesie of Land, without his wife haue possession in deed. D. A man shal be tenant by the curtesie of a rent though his wife dye befoze the day of payment, & in likewise of an Adowson though she die befoze the annoyance. S. That is truth for the old custome and Maxime of the law is, that he shal be so, but of land there is no Maxime that serueth him but his wife haue possession in deed. D. And what is the reason that there is such a maxime in the

¶

Law

The 51. Chapter.

law of the rent & of the aduowson, neither the
of land when the husband doth as much as in
him is to have possession and cannot? Some
assign the reason to be because it is impossible
to have possession in deed of the rent, or of ad-
uowson before the day of payment of the rent,
or before the avoidance of the aduowson. And
so it is impossible that he should have possession
in deed of Land if his wife dye so soone that he
may not by possibilitie come to the Land after
his fathers death, & in her life as the case is.
The law is such as I haue shewed thee before
& I take the herte cause to be, for that there is
a Maxim I weth for the rent and the aduow-
son, & not for the lands as I haue said before,
& as is said in the 8. chapter of our first Dia-
logue, it is not alway necessarie to assigne a
reason or consideration why the Maxims of
the law of England were first ordeined & ad-
mitted for Maxims, but it sufficeth that they
haue bin alway taken for law, and that they be
neither contrarie to the law of reason, nor to the
law of God as this Maxim is not, & therefore
if the husband in this case be not holpen by con-
science, he cannot be holpen by the law. And
if the law helpe him not, conscience cannot help
him in this case, for conscience must alway be
grounded vpon some law, and it cannot in this
case be grounded vpon the Law of reason, nor
vpon the law of God, for it is not directly by
those laws that a man shall be tenant by corte-
sie, but by the custome of the reuline. And ther-
fore if the custome help him not, he can nothing
have in this case by conscience: for conscience
never

neuer resisteth the law of man, nor addeth no-
 thing to it, but where þe law of man is in it self
 directly against the Law of reason, or else the
 Law of God, and then properly it cannot bee
 called a law, but a corruption, or where the ge-
 nerall grounds of the law of man worketh in
 any particular case against the said Lawes as
 it may doe, a yet the law good, as it appeareth
 in diuers places in our first dialogue in Latin,
 or els, wher there is no law of man provided for
 him that hath right to a thing by þe law of rea-
 son, or by the law of God. And then sometime
 there is remedie given to execute that in con-
 science, as by a Subpena, but not in all cases: for
 sometime it shal be referred to the conscience of
 the party, & vpon this ground (that is to say)
 that when there is no title given by the com-
 mon Law, that there is no title by conscience:
 There be diuers other cases, whereof I shall
 put some for an example. As if a Reuerſion be
 granted vnto one, but there is no attornment:
 or if a new rent bee granted by word without
 deed, there is no remedie by conscience, vnlesse
 the said grants were made vpon consideration
 of money, or such other. And in likewise where
 he that is seised of lands in Fee simple maketh
 a will thereof, that will is hold in conscience, be-
 cause the ground serueth not for him whereby
 the conscience should take effect, that is to say,
 the law. And if the tenant make a Feoffment
 of the land that he holdeth by priuie, & taketh
 estate againe, and dieth (his heire within age)
 the Lord of whom the land was first holden by
 priuie, shall haue no remedie, for the bodie by
 con-

The 16. Chapter.

conscience, for the law that first was with him, is now against him, & therfore conscience is altered in likewise as the law altereth. And diuers and many cases like be in the Law that were too long to rehearse now. And thus me thinketh that if the Law be as thou sayest, the husband in this case hath neither right by the Law, nor conscience.

¶ The 14. question of the Student,

Cap. 16.

A Rent is grated to a mā in fee to perceiue of two acres of lād, & after the grātoz enfeoffeth the graunter of one of the said acres, whether is the whole rent extinct thereby in conscience as it is in the law? D. This case is somewhat vncertain: for it appeareth not whether the grantor enfeoffed him on trust, or that he gave the acre to him of his mere motion, to the vse of the said feoffee, or else that the feoffement was made vpon a bargaine, & if it were but only a feoffement of trust, then I think the whole rent abideth in conscience though it bee extincted in the Law: & first that it continueth in that case in conscience, for the part that the graunter hath to the vse of the grantor it is euident, for he may not take the profits of the lād, and it is against conscience that he should take both, & in likewise it abideth in conscience for the acre that remaineth in the hāds of the grātoz, though it be extinct in the Law: For there was a default in the grauntoz that hee would make the feffement to the grātoz, as well as there

spag

was in the grantee to take it. And it is no conscience that of his owne default he should take so great auail to be discharged of the whole rent, seeing that the feffement was made to his owne vse. And if the feffement were made upon a bargaine & a contract betwixen them, then it is to see whether they remembered the rent in their bargaine, or that they remembered it not, & if they remembered it in their bargaine & contract, then conscience must follow the bargaine: As thus, if they agreed that the Graunter should haue the rent after the portion in the other acre, then by conscience hee ought to haue it though it be extinct in the law: And if they agreed that the whole rent should be extinct, and made their price according, then it is extinct in law & conscience: & if they cleerely forgot it & made no mention of it, or for lacke of cunning took the Law to be, that it should continue in the other acre after the portion, and made their price according, pondering onely the value of the acre that was sold, then mee thinketh it both continue in conscience after the portion: & if the feffement were made to the vse of the grantee, then it seemeth the whole rent is extinct in law and conscience. S. Then take this to be the case, that is to say, that the feffement was made to the vse of the grantee. D. What is thyne opinion therein? S. That the rent should abide in conscience after the portion of the acre remaining in the hands of the grator, notwithstanding it be extinct in the law. D. Then shew me thyne opinion in this that I shal aske thee: Of what law is it that graunts of rent and of such other

The 16. Chapter.

profits out of lāds may be made, and that they
 shalbe good & effectual to the grāters, whether
 it is by the law of reason, or by the law of god,
 or by the custom & law of the realm. S. I thinke
 it is by the law of reason: for by some reason
 that a mā may give away all his lāds, he may
 as it seemeth give away the profits thereof, or
 graunt a rent out of the land if he will. D. But
 then by what Law is it that a man may give
 away his lāds? I trow by none other law but
 by the custome of the realme, for by statute all
 alienations & grants of lands may be prohibi-
 ted, & then that reason proueth not that grants
 of the profits of lād or of a rent, shou'd be good
 because hee may alien the lād: if alienation of
 Land be by custome & not by the Law of rea-
 son, as I suppose it is, whereof I haue tou-
 ched somewhat in our first Dialogue in Latin
 the 19. Chapter. And also if Graunts shoul-
 haue their effect by the Law of Reason, then
 Reason would they shoul'd be good by the only
 word of the Grauntoz, as well as by his deed.
 And that is not so, for without deed the graunt
 of rent is void in law: and so me thinketh that
 graunts haue their effects only by the Law of
 the Realme. Stu. Admit it be so, what meanest
 thou thereby? Do, I shall shew thee hereafter,
 as I shal shew thee the cause why I thinke the
 rent is extinct in conscience, as well as in law.
 And first as I take it, the reason why it is ex-
 tinct in the law, is because the rent by the first
 grant was going out of both acres, and was
 not going part out of the one acre, & part out
 of the other, but the whole rent was going out
 of

of both, and then when the grantee of his own
 folly will take estate in the one acre, whereby
 that acre is discharged, then the other acre also
 must be discharged, vnles it should be apporzi-
 oned, and the law will not that any apporzi-
 onment should be in that case, but rather insomuch
 as the party hath by his owne act discharged
 the one acre, the law discharged also the other,
 rather than to suffer the other acre to be char-
 ged contrarie to the forme of the grant: For
 this rent beginneth all by the act of the partie.
 And as I haue heard it is called, a rent against
 common right. Wherefore it is not fauored in
 the law, as a rent seruice is: and then me thin-
 keth that for as much as it is not grounded by
 the law of reason, that grants of rent should be
 made out of Land, but by custome and law of
 the realm, as I haue said before: that so in like
 wise it remaineth to the law & custome of the
 realme, to determine how long such rents shall
 continue. And when the law indgeth such rent
 to bee void, I suppose that so doth conscience
 also, except the iudgement of the law be against
 the law of Reason or the law of God, as it is
 not in this case. For in this case he that taketh
 the feoffement hath profit by the feoffement, &
 knoweth that he hath such a rent out of the lād
 & that this purchase should extinct it, whereby
 it appeareth that hee assenteth vnto the Law,
 whereto he was not compelled, and that is his
 owne act and his owne default so to do, which
 shal extinct his whole rēt aswell in conscience
 as in law. But if he haue no profit of the Lād,
 or be ignozant that hee hath such a rent out of
 the

The 16. Chapter.

the land, which is called ignorance of the law:
 or if hee bee ignorant that the Law should ex-
 tinct his whole rent thereby, which is called
 ignorance of the Law, then mee thinketh it re-
 maineth in conscience after the portion. Sc. Ig-
 norance of the law or of Gods helpeth not but
 in few cases in the Law of England. D. And
 therfore it must be reformed by conscience, that
 is to say, by the law of reason, for when the ge-
 neral Maxims of the law be in any particuler
 cases against Gods law of reason, as this Maxime
 seemeth to bee, because it excepteth not they that
 be ignorant though it be an ignorance inuinc-
 ble, then both it not agree with the law of rea-
 son. S. He thinketh that ignorance in this case
 helpeth little: For when a man buyeth any land
 or taketh it of the gift of any other, hee taketh
 it at his perill, so that the title be not good ig-
 norance cannot help, for the buyer must beware
 what hee buyeth: & so in this case if the taking
 of an acre should extinct the whole rent in con-
 science, if hee were not ignorant, so mee thin-
 keth it should in likewise extinct it also though
 he be ignorant of the law or of the law: for eu-
 ry man must be compelled to take notice of his
 owne title, and out of what land his rent is go-
 ing, & so mee thinketh ignorance is but little to
 be considered in this case. D. If a man buy land
 or taketh it of gift of another, it is reason
 that he take it with the perill, though hee bee
 ignorant that another hath right: for it were
 not standing with reason that his ignorance
 should extinct the right of another, but in this
 case there is no doubt of the right of the land:

but all the doubt is how the rent shal be ordred
in conscience, if he that hath the rent take part
of the land: & therein is great diversity betwixen
him that is ignozant in the Law, and him that
knoweth the Law, & knoweth wel also that he
hath a rent out of the Land, and other. For I
put case that hee asked counsaile of the graun-
toz himselfe therein, & he saying as he thought,
told him that the taking of the one acre should
not extinct the rent but for the portio, and so he
thinketh the Law to be, take the other acre of
his gift: Is it not reasonable in that case, that
the ignozance should save the Rent in consci-
ence? *Sc. Des.* for there the grauntoz himselfe is
partly to his ignorance, and in maner the cause
thereof. *D.* And me thinketh all is one, if any o-
ther had shewed him so, or if he asked no coun-
saile at all, for mee thinketh it sufficeth in this
case that he bee ignozant of the Law: for why,
it is moze hard in this case to pzoove the Rent
should be extinct in conscience, though he knew
it should be extinct in the Law, than to pzoove
that it continueth in conscience after the porti-
on if he be ignozant, and thou thy selfe were of
the same opinion, as it appeareth in the begin-
ning of this present Chapter: But if the op-
inion were true, it would be hard to pzoove but
that the said generall Maxime were wholly a-
gainst reason, and then it were void, but I have
insufficiently answered thereto as mee seemeth,
& that it is extinct in the Law, and also in consci-
ence, except ignozance help it to be appoziioned
And mozeover, forasmuch as appoziotionment
is suffered in the Law, where part of the land
discern

The 17. Chapter.

descendeth to the grantee, because no default can be assigned in him: some thinke no default can be assigned in him in conscience, when he is ignorant of the Law or of the deed, though such ignorance do not excuse in the law of the realm. **Sr.** I am content with thy opinion in this behalfe at this time.

¶ The 15. question of the Student.

Cap. 17.

A Man granteth a Rent charge out of two acres of land, and after the grauntoz infeofeth **H. H.** in one of the said two acres to the vse of the said **H. H.** and of his heires, & after the said **H. H.** intending to extinct all the rent, causeth the said acre to be recovered against him to his owne vse in a writ of Entry in le Poss in the name of the grantee and of others after the common course, the graunter not knowing of it, and by force of the said recouerie the other demandants enter and die leaving the grantee, so that the grauntoz is seised of all by the statute to the vse of the said **H. H.** whether is the said rent extinct in conscience in part, or in all, or no part? **D.** I am in doubt of the law in this case. > In what point? **D.** whether the whole rent be going out of the acre that remaineth in the hands of the grauntoz, because the grantee cometh to the Land by way of recouerie, or that it shal be extinct in law but after the portion, because the grantee hath not the acre to his owne vse, or that the whole

whole rent shall be extinct in the Law. *S.* The rent cannot be whole going out of the acre that the grauntour hath: for this recoverie is vpon a feined title, and the grauntour because he is straunge to it shall be wel receiued to falsifie it. But if the Recoverie had been vpon a true title, then it had bene as thou sayst, if the graantee recover the one acre against the grauntour vpon a true title, the grauntour shall pay the whole rent out of the Land that remaineth in his hand; and as to the vse it maketh no matter to the grauntoz as to the law in whom the vse bee: for the possession without the vse extinguisheth the whole rent as against him in the law, as wel as if the possession and vse were both ioined together in the grantee.

Do. Then mee thinketh that the said Henry Hart is bound in conscience to pay the graantee the rent after the porttion of that acre that was recovered, for it cannot stand with conscience that hee should lose his rent, and haue no profits of land. *S.* Then of whom shall hee haue the other porttion of his rent? *D.* Is the law cleere that the acre that the grauntoz hath shall be in this case discharged in the law? *S.* I take the law so.

Do. And what in conscience? *S.* As against the grauntoz mee thinketh also it is extinct in conscience, for the reason that thou hast made in the 16. Chapter. For it is all one in conscience in this case as against the grauntour, whether the recoverie were to the vse of the graantee or not, specially seeing that the grauntour is not vniuie to the recovery: for the vniue of possessio

The 18. Chapter.

is a cause of extingishment of the rent against the grantor both in law and conscience, wher-soener the vse be. But if the grantor had bin priue to the cause of Extingishment, as he was in the case that I put in the last Chapter, where the grantor enfeoffed the grantee of one of the acres to the vse of the grantee, there it is not extinct in conscience in that acre that remaineth in the hands of the grantor, though it be extincted in the law, because hee was priue to the extingishment himselfe: but he is not so in this case, & therefore it is extinct against him in law & conscience. And therfore mee thinketh that the grantee shall in conscience haue the whole rent of the said W. Hart, that caused the said reuerie to be had in his name, for in him was all the default: but it is to be vnderstood, that in all the cases, where it is said before in this chapter, or in the chapter next before, that the rent is extinct in the law, and not in conscience, that in such case, all the remedies that the partie might first haue had for the Rent at the common Law by distresse, assise, or otherwise, are determined, & the party that ought to haue the rent in conscience, shall bee drinen to sue for his remedie by Subpena, D. I am content with thy conceit in this matter for this time.

¶ The 18. question of the Student.

Cap. 18.

A Villeine is granted to a man for terme of life, the villeine purchaseth Lands to him
and

and to his heirs, the tenant for terme of life entred: in this case by the Law he shall enjoy the lands to him and to his heires, whether shall he do so in likewise in conscience?

D. Hee thinketh it first good to see whether it may stand with Conscience, that one man may claime another to bee his villeine, and that he may take from him his lands and goods, and put his bodie in prison if hee will: it seemeth he loveth not his neighbour as himselfe that both so to him.

St. That Law hath bin so long bled in this Realme and in other also, and hath bin admitted so long in the Lawes of this Realme, and of divers other lawes also, and hath been affirmed by Bishops, Abbots, Priours, and many other men both Spirituall and Temporall, which have taken advantage by the said Law, and have seised the Lands and goods of their villeines thereby, and call it their right inheritance so to doe: that I thinke it not good now to make a doubt, ne to put it in argument whether it stand with conscience or not, and therefore I pray thee, admitting the Law in that behalfe to stand in Conscience, shew mee thine opinion in the question that I have made.

D. Is the law cleere that hee that hath the villeine but onely for terme of life, shall have the lands that that villeine purchaseth in fee to him and to his heires.

S. Pee verily I take it so.

D. I should have takē the law otherwile: for

The 18. Chapter.

if a Seigniozie be granted to a man for terme of life and the tenant attourne, & after the land escheat, and the tenant for term of life entreib, he shall haue there none other estate in the land than he had in the Seigniozie: & we thinke that it should be like law in this case, and that the Lord ought to haue in the Land, but such estate as he hath in the villeine. v. c. The cases bee not alike, for in the case of the escheate the tenant for terme of life of the Seigniozie, hath the lands in the lieu of the Seigniozie, that is to say, in the place of the seigniozie, & the seigniozie is clearly extinct: but in this case he hath not the land in the lieu of the villaine, for hee shall haue the villaine stil as he had before, but he hath the lands as a profit come by means of the villaine, which he shall haue in like case as the villaine had them, that is to say, of all goods and chattels he shall haue the whole property, and of a lease for term of yeeres he shall haue the whole terme, and for terme of life he shall haue the same estate, the Lord shall haue in the land during the life of the villaine, and of land in fee simple, and of an estate taile that the villaine hath, the Lord shall haue the whole fee simple, although he had the villaine but only for terme of yeeres, so that he enter or lease according to the law before the villaine shen, or else he shall haue nothing.

D. Merily, and if the law be so, I thinke conscience followeth the law therein. For admitting that a man may with conscience haue another man to be his villeine, & iudgemēt of the Law in this case (as to determine what estate the

the

the Lord hath in the land by his entry) is nei-
ther against the law of reason nor against the
law of God, and therefore conscience must fol-
low the Law of the Realme. But I pray thee
let me make a little digression to heare thine o-
pinion in another case somewhat pertainyng
to the question, and it is this: If an Executor
haue a villeine, that his testator had for terme
of yeares, & he purchaseth lands in fee, and the
executor entrencheth into the land, what estate hath
he by his entry? A Fee simple, but that shalbe
to the behoofe of the testator, & shalbe an assent
in his hands. D. Well then I am content with
thy concept at this time in this case, and I
pray thee proceed to another question. S. For
asmuch as it appeareth in this case & in some
other befoze, that the knowledge of the law of
England is right necessarie for the good orde-
ning of the conscience: I would heare thine o-
pinion, If a man mistake the law, what danger
it is in conscience, for the mistaking of it. D. I
pray thee put some case in certaine therof that
thou doubtst in, & I wil with good will shew
thee my mind therein, or else it will be some-
what long or it can be plainly declared, and I
would not be tedious in this writing.

¶ The 17. question of the
Student.

Cap. 19.

A Man hath a Villeine for terme of life, the
villein purchaseth lands in fee as in p case

The 19. Chapter.

of the last Chapter, and the tenant for terms of life entreteth, and after the Willaine dyeth, he in the reuerſion pretending that the tenant for terme of life hath nothing in the Land, but for terme of life of the Willaine, asketh counsaile of one that sheweth him that he hath good right to the Land, and that hee may lawfully enter, and through that counsaile hee in the reuerſion entreteth, by reason of the which entrie, great ſuits and expences follow in the Law, to the great hurt of both parties: what danger is this to him that gaue the counsaile? D. Whether meanest thou that hee that gaue the counsaile, gaue it willingly against the Law, or that hee was ignorant of the Law? Sr. That hee was ignorant of the Law: for if hee knew the Law, and gaue counsaile to the contrarie, I thinke him bound to restitution, both to him against whom he gaue the counsaile, and also to his Client (if hee would not haue sued but for his counsaile) of all that they be damaged by it.

D. Then will I yet further aske thee this question, whether he of whom he asketh counsaile gaue himſelfe to learning, and to haue knowledge of the Law after his capacite, or that hee tooke vpon him to giue counsaile, and tooke no studie competent to haue learning, for if hee did so, I thinke he bee bounden in conscience to restitution of all the costs and damages that he sustained, to whom hee gaue counsaile, if hee would not haue sued but through his counsaile, and also to the other partie. But if a man that hath taken sufficient studie

in the law, mistake the law in some point that is hard to come to the knowledge of, hee is not bounden to such restitution, for hee hath done þ in him is: but if such a man knowing the law give counsell against the Law, is bound in conscience to restitution of costs and damages (as thou hast sayd before) and also to make amends for the vnt ruth

Scu. What if he aske counsell of one that he knoweth is not learned, and hee giveth him counsell in this case to enter, by force wherof hee entred? Do. Then hee they both bound in conscience to restitution, that is to say, the partie if hee be sufficient, and else the Counsellour because hee assented and gave counsell to the wrong.

Sc. But what is the Counsellour in that case bounden to him that he gave counsell to? Doct. To nothing: For there was as much default in him that asked the counsell, as in him that gave it, for hee asked counsell of him that he knew was ignorant, and in the other was default for the presumption, that hee would take upon him to give counsell in that hee was ignorant.

Sc. But what if hee that gave the counsell, knew not but that he that asked it, had trust in him, that hee could and would give him good counsell, and that he asked counsell for to order well his conscience, howbeit that the truth was, that he could not so doe?

D. Then is he that gave the counsell bounden to offer to the other amends, but yet the other may not take it in conscience.

The 19. Chapter.

St. That were somewhat perillous, for happily he would take it though he haue no right to it, except the world be wel amended. D. What thinkest thou in that amendment? St. I trust euery man will do now in this world as they should be done to, speake as they think, restore where they haue done wrong, refuse money if they haue no right to it, though it bee offered them, do that they ought to doe by conscience, although that they cannot bee compelled to it by no Law, and that none will giue counsell, but that they shall thinke to be according to conscience, and if they doe, to do what they can to reforme it, and not to intermit themselves with such matters as they be ignorant in, but in such cases to send them that aske the counsell to other, that they shall thinke bee more cunning than they are.

D. I were very well if it were as thou hast said, but, the more pittie, it is not alway so. And especially there is great default in giuers of counsell, for some for their owne lucre and profit giue counsell to comfort other to sue that they know haue no right, but I trust there bee but few of them: and some for dread, some for favour, some for malice, and some vpon considerations, and to haue as much done for them another time to hide their truth. And some take vpon them to giue counsell in that they be ignorant in, and yet when they know the truth will not withdraw that they haue misdone: for they thinke it shal be greatly to their rebuke, and such persons followe not this counsell, that saith That wee haue vnadvisedly done, let vs with
good

good aduise reuoke again. S. And if a man giue counsell in this Realme after as his learning and conscience giueth him, and regardeth not the Lawes of the Realme, giueth he good counsell: Do. If the Law of the Realme bee not in that case against the Law of God, nor against the Law of reason, hee giueth good counsell: For euerie man is bound to follow the Law of the countrie where he is, so it be not against the said lawes, and so may the cases be, that he may bind himselfe to restitution. St. At this time I will no further trouble thee in this question

¶ The 18. question of the Student.

Cap. 20.

¶ If a man of his metre motion giue lands to D. H. and to his heires by Indenture, vpon a condition, that he shall pearely at a certaine day pay to Jo. at Stile out of the same lands a certaine Rent, and if he doe not, that then it shalbe lawfull to the said Jo. at Stile to enter et. If the rent in this case be not payed to John at Stile, whether may the said John at Stile enter into the Lands by conscience, though hee may not enter by the law: D. May he not enter in this case by the Law, with the words of the Indenture be that he shall enter: S. Robertly, For there is an ancient Maxime in the Law that no man shall take advantage in a condition, but he that is partie or priuie to the condition, and this man is not party nor priuie where.

The 20. Chapter.

Wherefoze he shall haue no aduantage of it. D. Though hee can haue no aduantage of it as partie, yet because it appeareth evidently that the intent of the giner was, that if hee were not payed of the rent, that hee should haue the land: It seemeth that in conscience he ought to haue it, though hee cannot haue it by the Law. Sr. In many cases the intent of the party, is hold to all intents, itif he not grounded according to the law: And therfoze if a man make a lease to another for terme of life, and after of his meere motion hee confirmeth his estate for terme of life to remaine after his death to another, and to his heires. In this case that remainder is hold in law and conscience, for by the Law there can no remainder depend vpon no estate, but that the same estate beginneth at the same time that the remainder doth: And in this case the estate began befoze, and the confirmation enlarged not his estate, nor giue him no new estate. But if a lease be made to a man for terme of another mans life, and after the lessoz onely of his meere motion confirmeth the Land to the Lessee for terme of his owne life, the remainder ouer in Fee, this is a good remainder in the law and conscience: and so mee thinketh the intent of the partie shall not bee regarded in this case. Do. And in the first case that thou hast put, mee thinketh though it passe not by way of graunt of that, yet shall it passe, as by the way of remainder of the reuerſion, for euery deed shalbe taken most strong against the grauntoz, and the taking of the deed in this case is an attornment in it selfe. Sr. That cannot

not bee, for hee in the remainder is not party to the deed, and therefore it cannot be taken by the way of grant of the reversion: for no grant can bee made but to him that is partie to the deed, except it be by way of remainder. And therefore if a man make a lease for terme of life, and after the lessee grant to a stranger that the tenant for terme of life shall have the land to him and to his heires, that grant is void if it be made onely of his mere motion without recompence. And in likewise if a man make a Lease for terme of life, and after grant the reversion to one for terme of life, the remainder over in fee, and the Tenant attorneth to him that hath the estate for terme of life only, intending that he onely should have advantage of the grant, his intent is void, & both shall take advantage there. And the attornment shall be taken good, according to the grant: And so in this case, though the feoffour intended that if the rent were not payd, that the stranger should enter, yet because the law giueth him no entrie in that case, that intent is void, & the same stranger shall neither enter into the land by law nor conscience. Doct. What shall then be done with that land as thou thinkest after the condition broken? S. I thinke that the feoffor in this case may lawfully reenter, for when the feoffment was made by condition that the feoffee would pay a rent to a stranger, in those words is concluded in the Law, that if the rent were not paid to the stranger, that the feoffor should reenter: for those words upon condition imply so much in the law though it be not expessed.

And

The 21. Chapter.

And then when the feoffor went further & said that if the rent were not paid, that the stranger should enter, those words were void in law: and so the effect of the deed stood upon the first words whereby the feoffor may reenter in law & conscience: but if the first words had not bin conditionall, I would haue holden it the greater doubt. Do. I pray thee put the case thereof in certaine with such words as be not conditionall that I may the better perceiue what thou meanest therein.

¶ The 19. question of the Student.

Cap. 21.

A Man maketh a Feoffment by deed indented, & by the same deed it is agreed, that the feoffee shall pay to A. B. & to his heirs a certaine rent yerely at certaine dayes, & that if he pay not his rent, then it is agreed that A. B. or his heires shall enter into the land and after the feoffee payeth not the rent, then the question is, who ought in conscience to haue this land and rent. Do. Ere wee argue what conscience will, let vs know first what the Law wil therein. Sr. I thinke that by the law neither the feoffor ne yet the said A. B. shall neuer enter into the Land in this case for nonpayment of the rent, for there is no reentrie in this case giuen to the feoffor for not payment of the rent as there is in the case next before, & the entrie that is giuen to the said A. B. for not paiement thereof is void in the law, because hee is estrange to the

the deede, as it appeareth also in the next chapter befoze. And therfore mee thinketh that the greatest doubt in this case is to see to what vse this feoffment shall be taken.

Do. There appeareth in this case as thou hast put it, no consideration ne recompence giuen to the feoffor, whereupon any vse may be deriued: and if the case bee so indeed, and that the feoffour declared neuer his mind therein, to what vse shall it then be taken? Sc. I thinke it shall bee taken to bee to the vse of the feoffee as long as he payeth the rent, for there is no reason why the feoffee should bee busied with payment of the rent hauing nothing for his labor: ne it may not conveniently be taken that the intent of the feoffour was so except hee expessed it, & then it must bee taken that he intended to recompence the feoffee for the business, that he should haue in the paiement ouer, and by the wordes following his intent appeareth to bee so, as mee thinketh, for if the rent were not paid, he would that A. B. should enter, and so it seemeth he intended not to haue any vse himselfe: and thus me seemeth this case should varie from the common case of vses, that is to say, if a man seised of land make a feoffment thereof, and it appeareth not to what vse the feoffment was made, ne it is not vpon any bargain or other recompence, then it shalbe taken to be to the vse of the feoffor, except the contrarie can be proued by some bargain, or other like, or that his intent at the time of the livery of seisin was expessed that it should bee to the vse of the feoffee or of some other, and then it shall

The 21. Chapter.

shall goe according to his intent: but in this case
 me thinketh it shalbe taken that his intēt was,
 that it should first be to the vse of the feoffor, for
 the cause besore rehearsed, except the contrary
 can be proued, & so that knowledge of the intēt
 of the feffor is the greatestt certainty for know-
 ledge of the vse in this case as me seemeth: but
 when the feoffour goeth further and said that
 if the rent be not paid, that then the sayd A. B.
 should enter into the Land, then it appeareth
 that his intent was that the rent should cease,
 and that A. B. should enter into the Land, and
 though hee may not by those words enter into
 the land after the rules of the law, and to haue
 freehold, yet those words seeme to bee sufficient
 to proue that the intent of the feoffor was that
 hee should haue the vse of the land: for sith hee
 had the rent to his owne vse, and not to the
 vse of the feoffour, so it seemeth he shall haue the
 vse of the Land that is assigned to him for the
 payment of the rent. Do But I am somewhat
 in doubt whether hee had the rent to his owne
 vse: for the intent of the feoffor might bee that
 hee should pay the rent for him to some other,
 or some other vse might bee appointed thereof
 by the feoffor. **Sc.** If such an intent can bee pro-
 ued, then the intent must be obserued: but wee
 bee in this case to wit, to what vse it shall bee
 taken if the intent of the feoffor cannot be pro-
 ued, and then me thinketh it cannot bee other-
 wise taken, but it shall bee to the vse of him to
 whom it should be paid: for though it bee cal-
 led a rent, yet it is no rent in Law, ne in the
 law he shall neuer haue remedie for it, though it
 were

were assigned to him, and to his heires without condition, neither by distresse, by assise, by writ of Annuitie, nor otherwise, but he shall be bounden to sue in the Chauncerie for his remedie, and then when hee sueth in the Chauncerie, hee must surmise that he ought to haue it by conscience, and that he can haue no remedie for it in the law. And then, sith he hath no remedie to come to it but by the way of Conscience, it seemeth it shall be take, that when he hath recovered it that he ought to haue it in conscience, & that to his owne vse, without the contrarie can be proued, and if the contrarie can be proued, and that the intent of the feoffor was, that hee should dispose it for him as hee should appoint, then hath he the rent in vse to another vse, and so one vse should be depending vpon another vse, which is seldome seene, and shall not be intended till it be proued: and so, sith no such matter is here expessed, me thinketh the rent shall be taken to be to the vse of him that it is payd to, and the Land in likewise that is appointed to him for not payment of the said rent shall be also to his vse, how thinkest thou, will conscience serue therein? Do. I thinke that as thou takest the Law now, that conscience (in this case) and the Law be all one, for the law searcheth the same thing in this case, to know the case that conscience doth, that is to say, the intent of the feoffor, and therefore I would mooue thee farther in one thing. Stu. What is that?

D. That sith the intent of the feoffor shalbe so much regarded in this case, whye it ought not also

The 22. Chapter.

to be as much regarded in the case that is in the
last chapter next before this, where the words
be conditional, & give the feoffor a title to reenter:
for me thinketh, that though the feoffor may
in that case reenter for the condition broken,
that yet after this entry he shall be seised of the
land after his entry to the use of him, to whom
the Land was assigned by the said Indenture
for lacke of payment of the rent, because the in-
tent of the feoffor shall be taken to be so in that
case as well as in this. And I pray thee let me
know thy mind, what diversitie thou puttest
betwene them. S. Thou drivest mee now to a
narrow diversitie, but yet I will answer thee
therein as well as I can. D. But first ere thou
shew me that diversitie, I pray thee shew mee
how Uses began, and why so much Land hath
bene put in use in this Realme as hath bin. S.
I will with good will say as mee thinketh
therein.

How uses of land first began, and by what
law, and the cause why so much land
is put in use.

Cap. 22.

Vses were reserved by a secondary con-
sideration of the law of reason in this manner: where
the generall custom of property, whereby
every man knew his owne good from his neigh-
bors was brought in among the people: It fol-
lowed of reason that such lands & goods as a man
had, ought not to be taken from him but by his
assent

assent or by order of a law: and then sith it is so that enery man that hath Lande hath thereby 2 things in him, that is to say, the possession of the Land which after the Law of England is called the franktenement or the freehold, & the other is authoritie to take thereby the profits of the land: wherefore it followeth that he that hath land & intendeth to giue onely the possession & freehold thereof to another, & to keepe the profits to himselfe, ought in reason & conscience to haue the profits, seeing there is no law made to prohibite, but that in conscience such reservation may be made. And so when a man maketh a feoffment to another and intendeth that he himselfe shall take the profits, then the feoffee is said seised to his vse that so infeffed him, that is to say, to the vse that he shall haue the possession & freehold thereof, as in the law, to the intent that the feffor shall take the profits: and by order this manner, as I suppose, vse of land first began. D. It seemeth that the reseruing of such vse is prohibited by the law, but if a man make a feffment and reserue the profits, or any part of the profit, as the grasse, wood or such other, that reservation is void in the law: & me thinketh it is all one to say, that the Law iudgeth such a thing if it be done to be void, & that the law prohibiteth that the thing shall not be done. St. Truth it is that such reservation is void in the law as thou saist, and that is by reason of a Maxim in the Law that smilith such reservation of part of the same thing shall be iudged void in the law: but yet the law doth not prohibite that no such reservation shall bee made

The 22. Chapter.

but if it be made it together of what effect it shall be that is to say, that it shall be void, and so he that maketh such reservation offendeth no law thereby, ne breaketh no law thereby, and therefore the reservation in conscience is good: but if it were prohibite by statute that no man should make such reservation, ne þ no feffment of trust should be made, but þ all the feffments should bee to the vse of him to whom possession of the land is given: then the reservation of such vse against the Statute should be void, because it were against the law, a yet such a statute should not be a statute against reason; because such verses were first grounded & reserved by the law of reason, but it should prevent the law of reason, & should put away the consideration whereupon the Law of reason was grounded before the statute made. And then to the other question, that is to say, why so much land hath bene put in vse, it will be somewhat long & paranture to some tedious to shew all the causes particularly: but the brief cause why the vse remained to the feffor notwithstanding his own feffment or fine, & sometime notwithstanding a recovery against him, is all by one consideration after the cause and entent of the gift, fine, or recovery, as is aforesaid. D. Though reason may serue that upon a feffment a vse may be reserved to the feffor by the intent of the feffor against the forme of his gift, as thou hast sayd before, yet I cannot much how an vse may be reserved against a fine, that is one of þ highest Records that is in the law, and is taken in the Law of so high effect that it should make an
end

end of all strifes, or against a recovery that is
ordained in the law for them that be wronged
to recover their right by: and me thinketh that
great inconvenience & hurt may follow, when
such Records may so lightly bee avoided by a
secret intent or use of the parties, & by a Jude
and bare averment & matter indeed, and spe-
cially sith such a matter indeed may be alledged
that is not true, whereby may rise great strife
betweene the parties, & great confusion & un-
certainty in the law: but nevertheless sith our
intent is not at this time to treat of that mat-
ter, I pray thee touch shortly some of the cau-
ses, why there hath bin so many persons put in
estate of lands to the use of other, as there hath
bin, for as I heare say, few men be sole seised
of their owne land. &c. There hath bene many
causes thereof, of the which some be put away
by divers statutes, & some remain yet: wherefore
thou shalt understand, that some have put their
land in feoffment secretly, to the intent & they
that have right to the Land, should not know
against whom to bring their action, and that is
somewhat remedied by divers Statutes that
give actions against Barons and takers of
the profits. And sometime such feoffments of
trust have bin made to have maintenace & bea-
ring of their feoffers, which peradventure were
great Lords or rulers in the Countie: and
therefore to put away such maintenace, tre-
ble damages be given by statute against them
that make such feoffments for maintenace.
And sometime they were made to the use of
Mortmaine, which might then be made with-
out

The 22. Chapter.

but for feiture though it were prohibited & the
 frehold might not be given in Mortmain. But
 that is put away by the Statute of R. 2. And
 sometime they were made to defraud the lord
 of wards, releues, heriots, and of the lands of
 their villeines: but those points bee put away
 by diuers statutes made in the time of King H.
 the 7. Sometime they were made to auoid exe-
 cutions vpon Statute Staple, Statute Mer-
 chant, & Recognisance: & remedie is provided
 for that, that a man shall haue execution of all
 such lands as any person is seised of to the vse
 of him that is so bound, at the time of execution
 sued in the 19. yeare of H. 7. And yet remain se-
 offements, fines, and recoveries in vse of many
 other causes, in manner as many as there did
 before the said estatute. And one cause why
 they be yet thus vled, is to put away tenancie
 by the curtesie, and titles of Dowry. Another
 cause is, for that lands in vse shall not be put in
 execution vpon a Statute Staple, Statute Mer-
 chant, nor Recognisance, but such as be in the
 hands of the Recognisor at the time of the exe-
 cution sued. And sometime lands be put in vse
 that they should not be put in execution vpon a
 writ of Extendi facias ad valentiam. And some-
 time such vles bee made, that hee to whose vse
 it may declare his will thereon, & sometime for
 suretie of diuers covenants in Indentures of
 marriage, & other bargaines, & these 2. last arti-
 cles, be the chief & principal cause why so much
 land is put in vse. Also lands in vse be not ass-
 tised in a Formedon nor in an action of Debt
 against the heire: ne they shal not be put in exe-
 cution

ention by an Elegit sued vpon a recoverie as
 some men say : & these be the vertie chiefe causes
 as I now remember, why so much Land Can-
 deth in vble as there doth : & all the said vbles be
 reserued by the intēt of the parties vnderstand
 oꝝ agreed between them , and that many times
 directy against the words of þe feoffment, fine,
 oꝝ recovery, and that is done by the law of rea-
 son, as is aforesaid. D. Why not a vble be assign-
 ed to a stranger , as well as to be reserued to
 the feoffoꝝ, if the feffoꝝ so appointed it vpon
 his feoffment? Stu. Yes as well, and in like
 wise to the feoffe, & that vpon a free gift with-
 out any bargain oꝝ recompence, if the feffoꝝ so
 will. D. What if no feoffment be made but that
 a man grant to his feffe, that from hencefoꝝth
 he shall stand seised to his owne vble, is not that
 vble changed , though there be no recompence?
 Stu. I thinke yes, for there was an vble in Elle
 before the gift, which he may as lawfully give
 away, as he might þe land if he had it in posses-
 sion, D. And what if a man being seised of land
 in fee, graūt to another of his mere motiō with-
 out bargaine oꝝ recompence, þe he from thence-
 foꝝth shall be seised to the vble of the other , is
 not that graunt good? St. I suppose that it is
 not good, for as I take the Law, a man cannot
 commence an vble but by livery of seisin oꝝ vpon
 a bargaine oꝝ some other recompence. D. I
 hold me contented with that thou hast said in
 this Chapter for this time, & I pray thee shew
 me what diuersitie thou puttēst betweene these
 two cases that thou hast before rehearsed in
 the 20. Chapter and in the 21. Chapter of this

The 23. Chapter.

present booke. Sc. I will with good will.

The diuersitie betweene two cases hereafter following, whereof one is put in the 20. Chapter, and the other in the 21.

Chapter of this present Booke.

Cap. 23.

The first case of the said two cases is this. A man maketh a feoffment by deed indented vpon a condition that the feoffee shall pay certain rent yearly to a stranger, &c. & if he pay it not, that it shalbe the lawfull to the stranger to enter into the land. In this case I said before in the 20. Chapter, that the stranger might not enter, because that he was not vnder vnto the condition. But I said, that in that case the feoffor might lawfully reenter by the first words of the Indenture, because they imply a condition in the law, and that the other words (his to say) that the stranger should enter, bee void in law & conscience. And therefore I said farther, that when the feoffor had reentered, that he was seised of the land to his owne vse, and not to the vse of the stranger, though his intent at the making of the feoffment, were that the stranger after his entrie, should haue had the land to his owne vse, if he might haue entered by the law. And the cause why I thinke that the feoffor was seised in that case to his owne vse, I shall shew thee afterward. The second case is this, a man maketh a feoffment in fee, and it

is agreed vpon the feoffment, that the feoffee shall pay a yerely rent to a stranger, & if he pay it not, that then the stranger shall enter into the land. In this case I said as it appeareth in the said xxj. Chapter, that if the feoffee paid not the rent: that the stranger should haue the vse of the land, though he may not by the rules of the law enter into the land, and the diuersitie betwene the cases me thinketh to bee this. In the first case it appeareth as I haue said before in the said xx. Chapter, that the feoffour might lawfully reenter by the law for not payment of rent, & then when he entered according, he by that entrie ainoied the first livery of seisin, in so much that after the reentrie hee was seised of the land of like estate as hee was before the feoffment: And so remaineth nothing, wherempon the stranger might ground his vse, but onely the bare graunt or intent of the feoffor: when he gaue the land to the lessee vpon condition that hee should pay the rent to the stranger, and if not, that it should be lawfull to the stranger to enter: for the feoffment is aoided by the reentry of the feffor as I haue said before: and so I sayd in the last Chapter, as I suppose a made or bare graunt of him that is seised of land, is not sufficient to begin an vse by D. A bare grant may change an vse as thou thy selfe agreed in the last chapter, why then may not an vse aswell begin vpon a bare grant? S. When an vse is in esse, he that hath the vse may of his meere motion giue it away if hee will without recompence, as he might the land if hee had it in possession,

The 23. Chapter.

but I take it for a ground, that he cannot so begin an vse with out livery of seisin, or upon a recompence or bargaine, & that there is such a ground in the law, & it may not so begin it appeareth thus: If hath bin alway holden for law, that if a man make a deed of tenderment to another & deliver the deed to him as his deed, that in this case he to whom the deed is delivered, hath no title ne medling with the land afoze livery of seisin be made to him, but onely that he may enter & occupie the land at the will of the feoffor, & there is no booke saith that the feoffee in that case is seised therof before livery to the vse of the feoffee. And in likewise if a man make a deed of ffelement of 2. acres of land that lie in 2. shires, intending to give them to the feoffee & makeih livery of seisin in the one shire, & not in the other, In this case it is commonly holden in bookes that the deed is void to the acre where no livery is made, except it be sought in that wise saie only that he may enter & occupie at will, as is afoze said: & there is no booke that saith that the feoffee should have the vse of the other acre, for if an vse passed thereby, then were not the deed void but on all intents, & yet it appeareth by the words of the deed that the feffor gave the lands to the feffee, but for lacke of livery of seisin the gift was void, & so me thinketh it is here without livery of seisin be made according: but in the 2. case of the said 2. cases the feoffee may not reenter for non-payment of the rent, and so the first livery of seisin continueth & standeth in effect, and thereupon the first vse may well begin and take effect in the stranger of the land.

When

When the rent is not paid unto him according
to the first agreement. And so me thinketh that
in the first case the vse is determined, because
the livery of seisin, wherupon it commenced is
determined, & that in the second case the vse of
the land taketh effect in the stranger for not
payment of the rent, by the grant made at the first
livery, which yet continueth in his effect, & this
me thinketh is the diversitie betwene the ca-
ses. Do. Yet not withstanding the reason that
thou hast made, me thinketh that if a man seised
of Lands, make a gift thereof by a nude pro-
mise without any livery of seisin or recompence
to him made, and grant that hee shall bee seised
to his vse, that though the promise be void in
the law, that yet neuerthelesse it must hold and
stand good in conscience and by the law of rea-
son, for one rule of the law of reason is, that we
may do nothing against the truth, and sith the
truth is that the owner of the ground hath
granted that he shall be seised to the vse of the
other, that grant must needs stand in effect, or
else there no truth in the graunto. S. It is
not against the truth of the graunto. In this
case, though by the grant hee be not seised to
the vse of the other, but it proueth that he hath
granted that the Law will not warrant him
to grant, wherfore his grant is void. But
if the graunto had gone further and said, that
hee would also suffer the other to take the pro-
fits of the lands without let or other inter-
ruption, or that hee would make him estate in
the land when hee should bee required, then I
think in those cases he were bound in conscience,
by

The 24. Chapter.

by that rule of the law of reason that thou hast remembred, to performe them, if he intend to be bounden by his promise, or els he should goe against his owne truth, and against his owne promise. But yet it shall make no vlie in that case, nor he to whom the promise is made shall haue no action in the Law vpon that promise, though it bee not performed, for it is called in the Law a Nude or naked promise. And thus me thinketh, that in the first case of the sayde two cases, the grant is now auoided in the law by the reuerty of the feoffor, and that the lessor is not bounden by his grant neither in law nor conscience, but in the second case hee is bound, so that the vlie passeth fro him, as I haue sayd before. D. I hold me content with thy conceit for this time, but I pray thee shew me some what more at large what is taken for a Nude contract, or naked promise in the Lawes of England, and where an action may lye thereupon, and where not. St. I will with good will say as me thinketh therein.

¶ What is a Nude contract, or naked promise after the Lawes of England, and whether any action may lye thereupon.

Cap. 24.

First it is to be vnderstand, that contracts be grounded vpon a custome of the realm, & by the law that is called *Ius gentium*, & not directly by the law of reason, for when all things were in common, it needed not to haue con-
tracts

tracts, but after property was brought in, they were right expedient to all people, so if a man might haue of his neighbor that hee had not of his owne, and that could not be lawfully but by his gift, by way of lending, concord, or by some lease, bargain, or sale: and such bargains and sales bee called contracts, and bee made by assent of the parties vpon agreement betwene them, of goods or lands, for money, or for other recompence, but of money vsuall, for money vsuall is no contract. Also a concord is properly vpon an agreement betwene the parties, with diuers articles therein, some rising on one part, and some on the other, As if A. at Shille letteth a Chamber to Henrie Hart, and it is farther agreed betwene them, that the said H. Hart shall goe to bord with the said John at Shille, and the said Henry Hart to pay for the Chamber and boarding a certayne summe &c. this is properly called a Concord, but it is also a contract, & a good action lyeth vpon it. Howbeit it is not much argued in the Lawes of England what diuersitie is betwene a contract, a concord, a promise, a gift, a tene, or a pledge, a bargain, a covenant, or such other. For the intent of the law is to haue the effect of the matter argued and not the termes. And a nude contract is, where a man maketh a bargaine, or a sale of his goods or landes, without any recompence appointed for it: As if I say to another, I sell thee all my Land, or all my goods, and nothing is assigned that the other shall giue or pay for it, this is a nude contract, and as I take it, it is void in the law and conscience: and a Nude

The 24. Chapter.

or naked promise is, where a man promiseth another to give him certaine money such a day, or to build an house, or to do him such certaine service, & nothing is assigned for the money, for the building, nor for the service: these be called naked promises, because there is nothing assigned why they should be made, and I thinke no action lyeth in those cases though they bee not performed. Also if I promise to another to keepe him such certaine goods safely to such a time, & after I refuse to take them, there lyeth no action against me for it: But if I take the same and after they be lost or impayed through my negligent keeping, there an action lieth. D. But what opinion hold they that bee learned in the law of England in such promises that be called naked or nude promises: whether do they hold that they that make the promise, be bounden in conscience to perform their promise, though they cannot be compelled thereto by the law, or not? S. The bookes of the Law of England entreat little thereof, for it is left to the determination of Doctors, and therefore I pray thee shew me somewhat now of thy mind therein, & then I shall shew thee therein somewhat of the minds of divers, that be learned in the law of the realme. Do. To declare this matter plainly after the saying of Doctors, it would aske a long time, and therefore I will touch it briefly, to give thee occasion to desire to heare more therein hereafter. First thou shalt understand that there is a promise that is called an Admow, & that is a promise made to God, & hee that doth make such a vow upon a deliberate mind intending to per-
forme

foꝛme it, is bound in conscience to do it, though
 it be only made in the heart without pronoun-
 cing of woꝛds, and of other promises made to
 man vpon a certain consideration, if the promise
 be not against the law: as if A. promise to giue
 B. xx. l. because he hath made him such a house,
 or hath lent him such a thing, or such other like,
 I thinke him bound to keepe his promise. But
 if his promise be so naked, that there is no ma-
 ner of consideration why it should be made, the
 I thinke him not bound to performe it, foꝛ it is
 to suppose that there was some error in the
 making of the promise: but if such a promise be
 made to an Vniuersitie, to a city, to the church,
 to the Clergie, or to wize men of such a place,
 & to the honour of God, or such other cause like,
 as foꝛ maintenance of learning, of the common
 wealth, of the seruice of God, or in reliefe of
 povertie, or such other, then I thinke that hee is
 bounde in conscience to performe it, though there
 bee no consideration of woꝛldly profit, that the
 grauntoꝛ hath had or intendeth to haue foꝛ it:
 and in all such promises it must bee vnderstood
 that hee that made the promise intended to bee
 bound by his promise, foꝛ else commonly after
 all Doctors he is not bound, vnlesse hee were
 bound to it befoꝛe his promise: as if a mā pro-
 mise to giue his father a gowne that hath need
 of it, to keepe him from cold, and yet thinketh
 not to giue it him, neuerthelesse he is bound to
 giue it, foꝛ hee was bound thereto befoꝛe. And
 after some Doctors a man may be excused of
 such a promise in conscience by casualtie that
 cometh after the promise, if it be so, that if hee
 had

The 24. Chapter.

had knowe of the casualtie at the making of the promise hee would not haue made it. And also such promises if they shall bind, they must be honest, lawfull, and possible, and els they are not to be holden in conscience, though there be a cause &c. And if the promise be good and with a cause, though no worldly profit shall grow thereby to him that maketh the promise, but onely a spirituall profit, as in the case before rehearsed of a promise made to an University, to a Citie, to the Church, or such other, & with a cause as to the honour of God, there is most commonly holden that an oth upon those promises lyeth in the Law Cannon. > 1. Whether dost thou meane in such promises made to an University, to a city, or to such other as thou hast rehearsed before, & with a cause, as to the honour of God or such other, that the partie shall be bound by his promise, if he intended not to be bound thereby, y^e or nay? Do. I thinke nay, or more than upon promises made unto common persons. > 2. And then mee thinketh clearly, that no action can lie against him upon such promises, for it is secret in his owne conscience, whether he intended for to be bound or nay. And if the intent inward in his heart, manly cannot iudge, and that is one of the causes why the Law of God is necessary (that is to say) to iudge inward things, and if an action should lie in this case in Law Cannon, they should the Law Cannon iudge by the inward intent of the heart, which cannot be as we seeme. And therefore after diuersely he learned in the lawes of the realm, all promises shall be taken in this manner

manner, that is to say, If he to whom the promise is made, haue a charge by reason of the promise which he hath also performed: then in that case hee shall haue no action for that thing that was promised, though hee that made the promise haue no worldly profit by it. And if a man say to another, heale such a poore man of his disease, or make an high way, and I shall giue thee thus much, and if he doe it, I thinke an action lyeth at the common law. And moreover though the thing that he shall doe bee all spirituall, yet if hee performe it, I thinke an action lyeth at the common Law. As if a man say to another, fast for me all the next Lent, and I shall giue thee twenty pounds, and he performeth it, I thinke an action lyeth at the common Law. And in likewise if a man say to another, marry my daughter and I will giue thee twenty pounds, vpon this promise an action lyeth, if hee marry his daughter: And in this case hee cannot discharge the promise though hee thought not to be bound thereby, for it is a good contract, and he may haue *Quid pro quo*, that is to say the preferment of his daughter for his money. But in those promises made to an *Vniuersitie*, or such other as thou hast remembred before, with such causes as thou hast shewed, that is to say, to the honour of God, or to the increase of learning, or such other like, where the partie to whom the promise was made is bound to no new charge, by reason of the promise made to him, but as he was bound to before, there they thinke that no action lyeth against him, though hee performe not his

The 24. Chapter.

his promise, for it is no contract, & so his owne
conscience must be his iudge whether he intended
to be bound by his promise or not. And if
he intended it not, then hee offended for his dis-
simulation only, but if he intended to be bound,
then if he perform it not, vntruth is in him, and
he prometh himselfe to be a lyer, which is pro-
hibited aswel by the law of God, as by the law
of reason: And furthermore, many shal be learned
in the Law of England hold, that a man is as
much bounde in conscience by a promise made
to a common person, if he intended to be bound
by his promise, as hee is in the other cases that
thou hast remembred of a promise made to the
Church, or the Clergie, or such other: for they
say that asmuch vntruth is in the breaking of
the one as of the other, and they say that the vn-
truth is moze to be pondered than the person to
whom sh promise be made. D. But what hold
they if the promise be made for a thing past as
I promise thee xl. l. for that thou hast builded
me such a house, lyeth an action there? S. They
suppose nay, but he shall be bound in conscience
to perform it after his intent, as is before said.
Do. And if a man promise to giue another xl. li.
in recompence for such a trespassse that he hath
done him, lyeth an action there? r. I suppose
nay, & the cause is for that such promises be no
perfect contracts: for a contract is properly
where a man for his money shall haue by assent
of the other party certaine goods or some other
profit at the time of sh contract or after: but if sh
thing bee promised for a cause sh is past by way
of a redempce, then it is rather an accord than a
con-

contract, but then the Law is, that upon such accord the thing that is promised in recompence shall be paid, or delivered in hand, for upon an accord there lyeth no action. D. But in the case of trespass, whether hold they that he be bound by his promise, though hee intended not to be bound thereby. S. They thinke nay, no more than in the other cases that be put before. D. In the other cases he was not bound to that he promised, but onely by his promise, but in this case of trespass, hee was bound in conscience before the promise to make recompence for the trespass: and therefore it seemeth, that he is bound in conscience to keepe his promise, though hee intended not to be bound thereby.

Sc. Though hee were bound before the promise to make recompence for his trespass, yet he was not bound to no summe in certaine but by his promise: and because that the summe may be too much, or too little, and not egall to the trespass, and that the partie to whom the trespass was done notwithstanding the promise is at libertie to take action of trespass if hee will, therefore I hold that hee may be his owne Judge in conscience, whether he intended to be bound by his promise or not, as hee may in other cases, but if it were of a debt, then they hold that he is bound to performe his promise in conscience. Doct. What if in the case of Trespass hee affirmeth his promise with an oath. Sc. Then they hold that hee is bound to performe it for saving of his oath, though hee intended not to be bound, but if hee intended to be bound by his promise, then they say, that

The 24. Chapter.

an oath needeth not but to enforce the promise, for they say, hee breaketh the Law of reason, which is, that we may doe nothing against the truth, aswell whē he breaketh his promise that he thought in his owne heart to be bound by, as he doth when he breaketh his oath, though the offence bee not so great by reason of the periu-
rie. Wherefore to that thou sayest that vpon such promises as thou hast rehearsed before, shall lye an action after the law Cannon, verily as to that in this realme there can no action lye thereon in the spirituall court, if the promise bee of a temporall thing, for a prohibition, or a Praemunire facias should lye in that case. D. That is maruell sith there can no action lye thereon in the Kings court as thou saist thy selfe. S. That maketh no matter, for though there lie no action in the Kings court, against executors vpon a simple contract, yet if they bee sued in that case for the debt in the Spirituall court, a prohibition lyeth. And in likewise if a man wrong his Law butruey in an action of debt vpon a contract in the Kings Court, yet hee shall not be sued for the periuire in the spirituall court, and yet no remedie lyeth for the periuire in the Kings Court: for the Prohibition lyeth not onely, where a man is sued in the Spirituall Court of such things, as the party may haue his remedie in the Kings court, but also where the Spirituall Court holdeth plee in such case, where they by the Kings prerogative, and by the auncient custome of the realme ought none to hold. Doct. I will take aduiselement vpon that thou hast said in this matter, till another time,

time, and I pray thee now proceede to another question.

The 10. question of the Student.

Cap. 25.

A Man hath two sons, one borne before espousals, & the other after espousals, & the father by his will bequeatheth to his son & heire all his goods, which of these two sonnes shall haue the goods in conscience? D. As I said in our first dialogue in latin, the last Chap. the doubt of this case dependeth not in the knowing what conscience will in this case, but rather the knowing which of the sonnes shall bee iudged heire (that is to say) whether he shall be taken for heire that is heire by the Spiritual Law, hee that is heire by the Law of the Realme, or else that it shall bee iudged for him that the father tooke for heire? St. As to that point, admit the fathers mind not to be known, or els that his mind was that he should be taken for heire, that should be iudged for heire by the law, that in this case it ought to bee iudged by. And then I pray thee shew mee thy munde therein, for though the question be not directly depending vpon the point to see what conscience will in this case, yet it is right expedient for the well ordering of conscience, that it bee knowne after what law it shall bee iudged: for if it ought to be iudged after the temporall law, and should be heire, the it were against conscience, if the iudges in the spiritual Law should

The 25. Chapter.

Judge him for here that is here by the spiritual Law, and I thinke they should bee bound to restitution thereby, and therefore I pray thei shew mee thine opinion, after what Law it shall be iudged. D. Wee thinketh that in this case it shall be iudged after the law of a church, for it appeareth that the bequest is of goods, and therefore if any suit shalbe taken vpon the execution of the will for the bequest, it must be taken in the Spiritual Court, and when it is depending in the Spiritual court, we thinke it must be iudged after the spiritual law: for of the Temporal law they haue no knowledge, nor they are not bound to know it as thou thinkest, and more stronger not to Judge wther it. But if the bequest had bene of a chattell real, as of a lease for terme of yeares, or of a house, or such other, then the matter should haue come in debate in the Kings Court, and then I thinke the Judges there should iudge after the Law of the Realme, and that is, that the younger brother is here: and so we thinke the difference of the Courts shall make the difference of iudgement. St. Of that might follow a great inconueniencie as we seemeth, for it might be such a case that both chattels real, and chattels personall were in the will, and after that opinion, the one sonne should haue the chattels personall, and the other sonne the chattels real, and it cannot be conveniently taken as we thinkest, but that the fathers will was, that the one sonne should haue all, and not be divided. Therefore we thinke that he shall be iudged for here that is here by the common law: and

and that the Judges spirituall in this case bee bound to take notice what the common law is, for both the things that be in variance bee temporall, that is to say, the goods of the father, it is reason that the right of them in this realme shall bee determined by the law of the Realme.

Now may that be : for the Judges spirituall know not the law of the Realme, ne they cannot know it as to the most part of it, for much part of the law is in such speech that few men have knowledge of it, & there is no meanes ne familiaritie of studie between them that learne the said Lawes : for they be learned in severall places and after divers wayes, & after divers maners of teachings, and in divers speeches, & commonly the one of them have none of the Bookes of the other, and to bind the spirituall Judges to give Judgement after the law that they know not, ne that they cannot come to the knowledge of it, seemeth not reasonable. **Sci.** They must doe therein as the Kings Judges must doe, when any matter cometh before the that ought to bee judged after the spirituall Law, whereof I put divers cases in our first Dialogue in English the vij. Chapter, that is to say, they must either take knowledge of it by their own study or els they must enquire of the that be learned in the law of the Church, what the law is, and in likewise must they doe. But it is no doubt, that some of them would be loath to aske any such question in such case, or to consult that they are bound to give their judgement after the temporall Law, and surely they may lightly offend their conscience.

D. I suppose that some be of opinion that they are not bound to know the law of the realme, & verily to my remembrance I have not heard that Judges of the spiritual law are bound to know the law of the realme.

St. And I suppose that they are not onely bound to know the Law of the Realme, or to do that in them is to know it, when the knowledge of it openeth the right of the matter that dependeth before them, but that they bee also bound to know where and in what case they ought to Judge after it, for in such cases they must take the Kings Law as the Law spiritual to that point, & are bound in conscience to follow it as it may appeare by diuers cases, whereof one is this. Two Jointenants be of goods, and the one of them by his last will bequeatheth all his part to a stranger and maketh the other Jointenant his Executor & dyeth, if he to whom the bequest is made, sue the other jointenant, vpon the legacie as executor, &c. vpon this matter shewed, the Judges of the Spiritual Law are bound to iudge the will to be void, because it is void by the Law of the realme, whereby the jointenant hath right to the whole goods by the title of the Survivor, and is indged to haue the goods as by the first gift which is before the title of the will, and must therefore haue preferment as the eldest title, & if the Judges of the Spiritual Court iudge otherwile, they are bound to restitution: and by like reason the Executors of a man that is Outlawed at the time of his death may discharge themselves in the

Spiry

Spirituall court of the performing of legacies, because they be chargeable to the King, and yet there is no such law of vilagarie in the Spirituall Law.

D. By occasion of that thou hast said before I woulde aske of thee this question. If a Parson of a Church alien a portion of Dismes according as the Spirituall law hath ordayned, is not that alienation sufficient, though it have not the solemnities of the Tempozall Law? Sol. I am in doubt therein if the portion be vnder the fourth part of the value of the Church: but if it be to the value of the fourth part of the Church, or aboue, it is not sufficient, and therefore was the writ of right of dismes ordained: and if in a writ of right of Dismes it bee indged in the Kings Court for the patron of the successor of him that alieneth, because the alienation was not made according to the common law, then the Judges of the spirituall law are bound to giue their iudgement according to the iudgement giuen in the Kings Court. And in likewise if a parson of a Church agree to take a pension for the tithe of a Mill, if the pension be to the fourth part of the value of the Church or aboue, then it must be aliened after the solemnities of the Kings Laws, as lands and tenements must, or else the patron of the successor of him that alieneth, may bring a writ of right of Dismes, and recover in the Kings court: & then the Judges of the spirituall court are bound to giue iudgement in the Spirituall Courts accordingly, as is aforesaid, Doct. I haue heard say, that a writ of right of dismes is

The 25. Chapter.

giuen by the Statute of Weſt. 2. and that ſpeaketh
 onely of diſmeſſes, & not of penſions. S. When
 a Parſon of a Church is wrongfully deſeized
 of his diſmeſſes, and is let by an Indicaunt to ſue
 his Diſmeſſes in the Spiritual Court, then the
 patron may haue a writ of Right of Diſmeſſes
 by the ſtatute that thou ſpeakelt of, for there
 lay none at the Common Law, for the Parſon
 had there good right, though hee were let by the
 Indicaunt to ſue for his right. But when the
 Parſon had no remedie at the Spiritual Law,
 there a writ of Right of Diſmeſſes lay for the
 Patron by the common law, as well of penſions
 as of Diſmeſſes, and ſome ſay that in ſuch caſe it
 lay of leſſe than of the fourth part by the com-
 mon Law, but that I paſſe ouer And the rea-
 ſon why it lay at the common Law, if the Diſ-
 meſſes or penſions were aboue the fourth part
 &c. was this: by the Spiritual law the aliena-
 tion of the parſon withſut aſſent of the Biſhop
 and of the Chapter ſhall barre the ſucceſſour
 without aſſent of the patron, and ſo the patron
 might leſſe his parſonage and he not aſſenting
 thereto: for his encumbent might haue no re-
 medie but in the Spiritual court, and there hee
 was barred, wherefore the patron in that caſe
 ſhall haue his remedie by the common law where
 the aſſent of the Ordinary and Chapter with-
 out the Patron ſhall not lerne, as it is ſayd be-
 fore. But where the encumbent had good right
 by the Spiritual Law, there lay no remedie
 for the Patron by the Common Law, though
 the encumbent were let by an Indicaunt, and for
 that cauſe was the ſaid Statute made, and ſo
 ſpeaketh

meth as well by the equity for offerings and pen-
 sions, as for Dismes. Then further I would
 thinke that where the Spirituall Court may
 hold plea of a temporall thing, that they shall
 iudge after the temporall Law, and that igno-
 rance shall not excuse them in that case: for by
 taking of their office they have bound them-
 selves to have knowledge of asmuch as belon-
 geth to their office, as all Iudges be, spirituall,
 or temporall. What if it were in argument in
 this case, whether the ritch sonne might bee a
 Priest because he is a bastard in the temporall
 Law, that should be iudged after the spirituall
 Law, for the matter is spirituall. Do. Yet not-
 withstanding all the reasons that thou hast
 made, I cannot see how the Iudges of the spi-
 rituall Law, shall be compelled to take notice
 of the temporall Law, seeing that the most part
 of it is in the french Tongue for it were hard
 that every Spirituall Iudge should bee com-
 pelled to learne the tongue. But if the Law of
 the Realme were set in such order that they
 that intend to studie the Law Canon, might
 first have a sight of the law of the Realme, as
 they have now of the Law Civill, and that
 some Bookes and treatises were made of cases
 of conscience concerning these two Lawes, as
 there be now concerning the Law Civill & the
 law Canon, I would assent that it were right
 expedient, and then reason might seeme the bet-
 ter, that they should be compelled to take notice
 of the Law of the Realme, as they bee now
 bound in such Countreies as the law Civill is
 used to take notice of that Law.

The 26. Chapter.

St. *Me* thinketh thine opinion is right good and reasonable, but till such an order be taken, they are bound, as I suppose, to inquire of the that be learned in the common Law, what the Law is, and so to give ther iudgement accordingly, if they will keep themselves from offence of conscience. And forasmuch as thou hast well satisfied my mind in all these questions before, I pray thee now that I may somewhat feed thy mind in diuers articles that be written in diuers bookes for the ordering of conscience by the Law Cannon and Ciuill: for mee thinketh, that there be diuers conclusions put in diuers bookes, as in the *Summes* called *Summa Angelica*, and *Summa Rosella*, & diuers other, for the good order of conscience, that bee against the law of this realme, and rather blind conscience, then do giue any light vnto it.

D. I pray thee shew me some of those cases:
Stu. I will with good will.

¶ Whether an Abbot may with conscience present to an Aduowson of a Church that belongeth to the house without assent of the Couent.

Cap. 26.

It appeareth in the Chapter, *Et agnoscitur de his que sunt a Prelatis*, the which Chapter is recited in the sum called *Summa Angelica*, in the title *Abbas*, the xxvij. article, that he may not without any custome, or any special priuile

p̄uiledge to helpe theretn. St. Truth it is, that
 there is such a decretall, but they that be lear-
 ned in the law of England, hold the decretall
 bindeth not in this Realme, & this is the cause
 why they doe hold that opinion: By the Law
 of the realme the whole disposition of lands
 & goods of the Abbey is the Abbots onely for
 the time that he is Abbot, and not in the Co-
 uent: for they bee but as dead persons in the
 Law, and therefore the Abbot shall sue and be
 sued onely without the Couent, doe homage,
 fealtie, attorne, make leases, and present to ad-
 monitions onely in his owne name; and they
 say further, that this authoritie cannot bee ta-
 ken from him, but by the Law of the Realme,
 and so they say, that the makers of the decre-
 tall exceeded their power: wherefore they say
 it is not to be holden in conscience, no more thā
 if a decree were made that a lease for terme of
 yeares or at will made by the Abbot without
 the couent should be immediatly void, & so they
 thinke that the Abbot may in this case present
 in his owne name without offence of conscience,
 because the saide decretall holdeth not in this
 Realme. Do. But many be of opinion, that no
 man hath authoritie to present in right and
 conscience to any benefice with Cure but the
 Pope, or that hee hath his authoritie therein
 deriued from the Pope: for they say that foras-
 much as the Pope is the Vicar generall vnder
 God, & hath the charge of the soules of all
 people that be in the flocke of Christs Church,
 it is reason that sith hee cannot minister to all,
 he doe that is necessarie to all people for their
 soules

The 26. Chapter.

sonles health in his owne person, that he shall assigne deputies for his discharge in that behalfe. And because Patrons claime to present to Churches in this Realme by their owne right, without Title derived from the Pope, they say that they blurpe upon the Popes aposthettie: & therefore they conclude that though the Abbot have title by the law of the Realme to present in this case in his owne name, that yet because that title is against the Popes prerogative, that that title, as yet the Law of the Realme that maintaineth that title, holdeth not in conscience. And they say also that it belongeth to the law Cannon to determine the right of presentment to benefices, for it is a thing spirituall and belongeth to the spirituall jurisdiction, as the deprivation from a benefice doth, and so they say the said decretall bindeth in conscience, though in the law of the Realme it bindeth not. Sr. As to the first consideration I would right well agree, that if the patrons of Churches in this Realme claimed to put incumbents into such Churches as should fall void of their Patronage without presenting them to the Bishop, or if they claimed that the Bishop should admit such incumbent as they should present without any examination to be made of his abilitie in that behalfe, that that claime were against reason and conscience, for the cause that thou hast rehearsed: But so much as the Patrons in this Realme claime no more but to present their Incumbents to the Bishop, and then the Bishop to examine the abilitie of the incumbent, and if he find him
by

by the Examination not able to haue cure of
 soules, he then to refuse him, and the patron to
 present another that shalbe able, and if he be a-
 ble, then the Bishop to admit him, institute
 him, & induct him, I thinke that this calime, and
 their presentments thereupon stand with good
 reason and conscience. And as to the second
 consideration, it is holden in the Lawes of the
 Realme, that the right of presentment to a
 Church, is a temporall inheritance, & shall dis-
 tend by course of inheritance from heire to heire
 as lands & tenements shall, & shalbe take as an
 assets as lands and tenements be: and for the
 tryall of the right of patronages be ordeined in
 the lawe diuers actions for them & be worged
 in that behalfe, as writs of right of Aduowson,
 Assises of Darrein presentment, Quare impe-
 dic, & diuers other which alway without time
 of mind haue bin pleaded in the Kings courts,
 as things pertaining to his Crowne and roy-
 all dignitie: and therfore they say that in this
 case his lawes ought to bee obeyed in lawe and
 conscience. D. If it come in variance whether
 hee that is so presented bee able or not able, by
 whom shall the abilitie be tried? St. If the ordi-
 nary bee not partie to the action, it shall bee try-
 ed by the Ordinary and if hee be party it shall
 be tried by the Metropolitan. Doct. Then the
 Lawe is moze reasonable in that point than I
 thought it had bene: but in the other point I
 will take aduiseement in it till another time, and
 I pray the Reader direct thy mind in this point:
 If an Abbot name his consent with him in his
 presentation, both that make the presentation
 both

The 26. Chapter.

void in the law, or is the presentation good that notwithstandinge.

Str. I think it is not void therefore, but the naming of them is void, and a thing more than medeth. For if the Abbot be disturbed, he must bring his action in his owne name without the couent. D. Then I perceiue well that it is not prohibited by the Law of England, but that the Abbot may name the couent in his presentation with him, and also take their assent whom hee shall present if hee will: and then I hold it the surest way, that hee so doe, for in so doing hee shall not offend neither in Law, nor conscience. So to take the assent of the couent whom hee shall present, and to name them also in the presentation, knowing that hee may doe otherwise, both in Law and Conscience if hee will, is no offence: but if he take their assent, or name the with him in the presentation, thinking that he is so bound to do in law and conscience, letting a conscience where none is, and regardeth not the Law of the Realme, that will discharge his conscience in this behalfe, if hee will, so that he present an able man as hee may do without their assent, there is an error, and offence of conscience in the Abbot. And in likewise if the Abbot present in his owne name, and therefore the Couent saith that hee offendeth in conscience, in that hee obserueth not the law of the Church, for that he taketh not their assent, then they offend in iudging him to offend that offendeth not. And therefore the sure way is in this case to iudge both the said laws of such effect as they bee, & not to let an offence

of conscience by breaking of the sayde decree,
which standeth not in effect in this behalf with
in this Realme.

¶ If a man find beasts in his ground doing hurt,
whether may hee by his owne authoritie,
take them and keepe them till he
be satisfied of the hurt.

Cap. 27.

This question is made in the summe called
Iumma Rosella, in the title of restitution,
that is to say, Restitutio 13. the 9. Article,
and there it is answered, that hee may not take
them for to hold them as a pledge till he be sa-
tisfied for the hurt: but that hee may take them
and keepe them till hee know who oweth them,
that hee may thereby learne against whom to
haue his remedie. Is not the law of the realme
so in likewise? St. No verily, for by the Law of
the Realme, hee that in that case hath the hurt,
may take the beasts as a distresse, and put them
in a pound Quert, so it bee within the same
shire, and there let them remaine till the owner
will make him amends for the hurt. Do. What
callest thou a pound Quert. St. A pound Qu-
ert is not onely such a pound as is common-
ly made in Townes and Lordships, for to put
in beasts that bee distrained, but it is also exe-
cuted in place where they may bee in lawfully, not
making the owner an offendour for their bee-
ing there: And that it bee there also, that the
owner

The 27. Chapter.

owner may lawfully give the beasts meate and drinke while they be in pound.

D. And if they die in pound for lacke of meate whose leopordie is it? St. If it be such a pound Quert as I speake of, it is at the perill of him that oweth the beasts, so that hee that had the hurt shal be at libertie to take his action for the trespassse if hee will: and if it be not a lawfull pound, the it is at the perill of him that distrained, and so it is if he drine them out of the shire and they die there.

D. I put case that he that oweth the beasts, offer sufficient amends, and the other will not take it, but keepeth the beasts still in pound, may not the owner take them out? St. No, for he may not be his owne iudge, and if he doe, an action lyeth against him for breaking of the pound: but he must sue a Replewin to have his beasts delivered him out of the pound, and thereupon it shall bee tried by 12 men, whether the amends that was offered were sufficient or not, and if it be found that the offer was not sufficient, then he that hath the hurt shall have such amends as the 12 men shall assesse. D. If it bee found by the 12 men, that the amends were sufficient, shall he that refuseth to take it, have no punishment for his refusall, and for keeping of the beasts in pound after that time? St. I thinke no, but that he shall pay damages in the Replewin, because the issue is tried against him.

D. I put case that the beasts after the refusal die in pound for lack of meate, at whose leopordie is it then? St. At the leopordie of him that oweth

owed the beasts, as it was before: for he is bound at his perill by reason of the wrong that was done at the beginning: to see that they have meat as long as they shalbe in pound, vntill the Kings for it come to deliuer them, & he refusethe it: for after that time it will be at his leoparchie if they die for lacke of meat, & the damages shall bee recovered in an action brought vpon the Statute for disobeying the Kings writ.

¶ Whether a gift made by one vnder the age of xxv. yeares be good.

Cap. 18.

It appeareth in Summa Angelica in the title donatio prima the 7. article, that a mā before the age of 25. yeres may not give, without it be with the authoritie of his tutor: As it not so likewise at the common Lawe. The age of infants to give, or sell their lands and goods in the Law of England is at 21. yere, or above, so that after that age the gift is good, and before that age it is not good, by whose assent soener it be, except it be for his meat, & his drinke or apparel, or that hee doe it as executor, in performance of the will of his testatour, or in some other like cases, that needeth not to be rehearsed here: that age must be observed in this realm in law & conscience, & not the said age of 25. yere. Do. I put case, it were ordained by a decree of the Church, that if any man by his will bequeathed goods to another, & willeth that they

10

May

The 28. Chapter.

shalbe deliuered to him at his full age, & that in that case 25. yerres shalbe taken for the full age, shall not that decree bee obserued & stand good after the law of England? I suppose it shall not, for though it belong to the Church to haue the probate and the execution of Testaments made of goods & chattels, except it be in certain Lordships & seignories that haue the by prescription, yet the church may not as me seemeth determine what shall be the lawfull age for any person to haue the goods, for that belongeth to the King & his lawes to determine: & therefore if it were ordained by a statute of the realme, hee should not in such case haue the goods till he were of the age of 25. yerres, that that were good & to be obserued aswel in the spiritual law as in the law of the Realme, & if a statute were good in that case, then a decree made thereof is not to be obserued, for the ordyng of age may not be vnder two seueral powers, and one property of every good law of man is, that the maker exceed not his authoritie: and I think that the spirituall iudge in that case ought to iudge the full age after the law of the Realme, seeing that the matter of the age concerneth temporal goods: and I suppose farther that as the king by authoritie of his Parliament may ordaine that all wills shall be void, & that the goods of euerie man shalbe disposed, in such maner as by statute should bee assigned, that moze stronger he may appoint at what age such wills as bee made shalbe performed. D. Thinkest thou then that the King may take away the power of the Ordinarie, that he shal not call executors to account?

compt? **S.** I am somewhat in doubt therein, but it seemeth that if it might be enacted by statute that all wills should be void, as is aforesaid, that then it might be enacted, that no man should have authoritie, to call none to account upon such wills, but such as the statute shall therein appoint, for he that may do the more, may do the lesse: notwithstanding I will nothing speake determinately in that point at this time, ne I meane not, that it were good to make a statute that all wills should be void, for I thinke them right expedient, but mine intent is, to proue that the common law may ordaine the time of the full age, aswell in wills of temporall things as otherwise, and also that wills shalbe made And if it may so do, then much stronger it belongeth to the Kings lawes to interpret wills concerning temporall things, aswell when they come in argument befoze his Judges, as when they come in argument befoze spirituall Judges, & that they ought not to be iudged by severall lawes (that is to say) by the spirituall Judges in one manner, & by the Kings Judges in another manner.

¶ If a man be conuict of heresie before the Ordinarie, whether his goods be forfeited,

Cap. 29.

It appeareth in Summa Angelica in the title Donatio prima the 13. article, that he that is an heretike may not make executors for in the
p 2
law

The 29. Chapter.

I ask his goods be forfeit: what is the loss of the
 realme therein? S. If a man be convict of heresy
 and abjure, hee hath forfeit no goods, but if hee
 be convict of heresie, & be delivred to lay mens
 hands, then hath he forfeit all his goods that he
 hath at that time that hee is delivred to them,
 though hee be not put in execution for the here-
 sie: but his lands he shall not forfeit, except hee
 be dead for the heresie, & then he shall forfeit the
 to the lords of the fee, as in case of felonie, except
 they bee holden of the Ordinarie, for then the
 King shall have the forfeiture, as it appeareth
 by a statute made the second yere of H. 5. cap. 7.
 D. Wee thinke that as it belongeth onely to
 the Church to determine heresies, that so it be-
 longeth to the Church, to determine what pu-
 nishment hee shall have for his heresie, except
 death, which they may not be iudges in: but if
 the Church decree, that he shall therefore forfeit
 his goods, wee thinke that they bee forfeit by
 that decree: S. Nay verely, for they be tempo-
 rall, and belong to the iudgement of the Kings
 Court, and I thinke the Ordinarie might have
 set no fine vpon one impeached of heresie, till it
 was ordeined by the Statute of H. 4. that hee
 may set a fine in that case if hee see cause, & then
 the King shall have that fine, as in the said stat.
 appeareth.

¶ Where diuers patrons. of an Aduowson, and
 the Church voideth, the patrons vary in their
 presentments, whether the Bishop shall haue li-
 bertie to present which of the incumbents
 that he will, or not.

Cap;

Cap. 30.

This question is asked in Súma Rosella, in the title Patronus the 9. Article, & there it appeareth by the better oppinion, & he may present whether clark he will, howbeit & maker of the said sum, saith by the rigor of the law, the Bishop in such case may present a stranger, because the patrons agree not : & in & same chap. Patronus the 15. article, it is said, & hee must bee preferred that hath the most merits & hath the most part of the patrons : and if the number be egall, that thē it is to consider the merits of the patron, and if they be of like merit, thē may the Bishop command them to agree and to present again And if they cannot yet agree, then the liberty to present is given to the Bishop to take which he will : & if he may not yet present without great trouble, then shal the bishop order the Church in the best maner he can : & if he cannot order it, then shall he suspend the church, & take away the relicks to the rebukes of the patrons : and if they will not so be ordered, then must he aske help of the temporality. And in the 15. article of the said title Patronus, it is asked, whether it bee expedient in such case, that the moze part of the patrons agree, having respect to all the patrons, or that it suffice to have the moze part in comparison of the lesse part, as thus, There be foure patrons to present one clark : the first and second present one, the third presenteth another, and the fourth another, hee this is presented by 2. hath not & moze part in comparison of all the patrons, for they be egall, but hee hath the moze part having respect to

The 30. Chapter.

the other presentments: to this question it is answered, that either the presentment is made of thē that be of the colledge, & there is requisite the moze part hauing respect to all the colledge, or else every mā presenteth for himself, as commonly do lay mē & haue the patronage of their patrimonie, & then it sufficeth to haue the moze part in respect of the other parties, both not the law of England agree to these diuersities: *De Robertus. D.* What order then shalbe taken in the law of Englaō, if the patrōs vary in their presentments? *Ans.* After the lawes of England this order shalbe taken: If they be iointenāts, or tenāts in cōmon of h̄ patronage, & they vary in presentment, the Ordinary is not bound to admit none of their clerks, neither h̄ moze part nor the lesse, & if the 6. moneths passe or they agree, then he may present by the lays, but he may not present within h̄ 6. moneths, for if he do, they may agree and bring a Quare imp. against him, & remoue his clerke, & so the ordinary shal be a disturber: and if the patrons haue the patronage by descent as coperceners, then is the Ordinary bound to admit the clerk of the eldest sister, for the eldest shall haue the preferment in the law, if she will, & then at the next avoidance the next sister shall present, and so by turne one sister after another, till all the sisters or their heires haue presented, & thē the eldest sister shal begin again: and this is called a presenting by turne & it holdeth al way betwene coperceners of an aduowld, except they agree to present together, or that they agree by composition to present in some other maner, and if they doe so, the
agrees

agreement must stand: but this must be alway except, that if at the first avoidance that shalbe after the death of the common ancestor, & King haue the sword of the yongest daughter, & the king by his prerogative shal haue the presentation; and at the next avoidance the eldest sister, and so by turne. But it is to vnderstand that if after the death of the common ancestor the Church voideth, and the eldest sister presented together with another of the sisters, & the other sisters write one in their owne name or together, that in such case the Ordinary is not bound to receiue none of their Clerkes, but may suffer the church to run into the laps, as it is said before: for he shall not be bound to receiue such clerk of the eldest sister, but where she presenteth in her owne name. And in this case where the patrons varie in presentation, the Church is not properly sayd Litigious, so that the Ordinary should be bound at his perill to direct a writ to inquire de iure patronatus: for that writ lyeth where a. present by severall titles, but these patrons present all in one title, & therefore the Ordinary may suffer it to passe, if he will into the laps: and this manner of presentations must be observed in this realm in law and conscience.

¶ How long time the patron shall haue to present to a benefice.

Cap. 11. de presentationibus.

This question is asked in Summa Angelica in the title de iure patronatus the 16. Article, & there it is answered, that such patron be a lay man that he shal haue 4. months, and if he be a

The 31. Chapter.

Clarke, he shall haue 6. moneths. S. And by the
common law he shall haue 6. moneths whither
he be a lay man or a clarke, and I see no reason
why a clarke should haue more respit than a lay
man, but rather the contrarie. D. From what
time shall 6. moneths be accompted? S. That
is in diuers maners after the manner of the void-
dance, for if the church void by death, recreation,
or cession, the 6. moneths shall be counted from
the death of the incumbent, or from the creati-
on, or cession, wherof the patron shall be com-
pelled to take notice at his perill: as if the voy-
dance be by resignation or deprivation, the 6.
moneths shall begin when the patron hath
knowledge given him by the Bishop of the re-
signation or deprivation. D. What if hee haue
knowledge of the resignation or deprivation,
and not by the Bishop, but by some other, shall
not the sixe moneths begin then from the time
of that knowledge? S. I suppose that it shall
not begin till he haue knowledge given him by
the Bishop. D. His vnion is alwaies cause of voy-
dance, how shall the sixe moneths be reckoned
there? S. There can no vnion be made but the
patrons must haue knowledge, and it must be
appointed who shall present after that vnion, &
is to say, one of them or both, either ioyntly or
by turne one after another, as the agreement is
vpon the vnion, and sith the patron is priuie to
the avoidance, and is not ignorant of it, the sixe
moneths shall be accompted from the agree-
ment. Doct. I see well by the reason that thou
hast made in this Chapter. I imagine some-
time hereafter in the Law of England, for in

some of the sayd abundances it shall excuse the patrons, as it appeareth by the reasons aboue, and in some it shall not: wherefore I pray thee shew me somewhat where ignorance excuseth in the Lawes of England, and where not after thine opinion. Si. I will with good will hereafter doe as thou sayest if thou put mee in remembrance thereof. But I would yet move thee somewhat further in such questions as I have moued thee befoze, concerning the diuersities between the lawes of England and other lawes: for there be many wise causes thereof, that as mee seemeth haue right great neede, for the good order of conscience of many persons, to be reformed, and to bee brought into one opinion both among spirituall and temporall: as it is in the case where Doctors hold opinion, that the Statute of lay men that restraine libertie to giue lands to the Church should be void; & they say farther, that if it were prohibitt by a Stat that no gift should bee made to layreines that yet a gift made to the church should be good, for they say, that the inferiour may not take away the authoritie of the superiour, & this saying is directly against the Statute; whereby it is prohibitt, that lands should not be giuen into Mortmain: & they say also that bequests & gifts to a church must be determined after the law Canon, & not after the lawes & Statutes of lay men, and so they regard much to whom the gift is made, whether to the Church, or to make countwaies, or to comon persons, & beare more fauor in gifts to the Church than to other: and the lawes of the Realme beholbeth the thing that is
given

The 32. Chapter.

giuen and pretended, that if the thing that is giuen be of lands or goods, that the determination thereof, of right belongeth in this realme to the Kings lawes, whether it be to spiritual men or temporal, to the church, or to other, and so is great diuision in this behalf, whē one pre-ferreth his opinion, and another his, & one this iurisdiction, & another that, and that as it is to feare more of singularity thā of charity: wherefore it seemeth, that they that haue the greatest charge ouer the people, specially to the health of their soules, are most bound in conscience before other to looke to this matter, & to doe that in this is in all charitie to haue it reformed, not beholding the temporal iurisdiction nor spiritual iurisdiction, but the common wealthe, & quietnesse of the people: & that undoubtedly would shortly followe, if this diuision were put away, which I suppose verily wil not be, but yet all men with in the realme both spiritual & temporal be ordered & ruled by one law, as to temporal things: Notwithstanding forasmuch as the purpose of this writing is not to treat of this matter, therfore I will no farther speake thereof at this time. Do, Then I may the proceed to another question, that thou saiest thy mind is to do, & I will with good will.

¶ If a man bee excommunicated, whether he may in any case be absolved without making satisfaction.

Cap. 33.

In the Summe called Summa Rosella, in the little Absolutio quarta, the second article, it is sayd

said, that he that is excommunicat for a wrong
 if he be able to make satisfaction, ought not to
 be assolied but he doe satisfie, & that they offend
 that do assolie him, but yet neuertheles he is as-
 soyled, & if he be not able to make amends, that
 he must yet be assolied, taking a sufficient gage
 to satisfie if he be able hereafter, or else that he
 make another to satisfie if he be able. And these
 sayings in many things hold not in the Lawes
 of England. D. I pray thee shew me, wherein
 the law of the realme varieth therfore. Sr. If
 a man be excommunicat in the spiritual court
 for debt, trespass, or such other things as belong
 to the kings crowne, and to his royall dignitie,
 there he ought to be assolied without making
 any satisfaction, for the spiritual court ex-
 ceedeth their power in that they held ple in those
 cases, & the party if he will may thereupon haue
 a *Priemure facias*, aswell against the partie
 that sued him, as against the Judge: & therfore
 in this case they ought in conscience to make
 absolution without any satisfaction, for they not
 onely offended the partie in calling him to an-
 swer befoze them of such things as belong
 to the law of the Realme, but also the king: for he
 by reason of such iutes, may lose great aduan-
 tages, by reason of the wrights originals, iudi-
 ctals, fines, amerciements, & such other things
 as might grow to him if suits had bin taken in
 his courts according to his lawes: & according
 to this saying it appeareth in diuers statutes,
 that if a man lay violent hands vpon a clothe,
 and beat him, that for the beating amends shall
 be made in the kings court, and for the laying
 of

The 32. Chapter.

of violent hands vpon the Clarke, amends shal
 be made in the Court christian. And therfoze if
 the Judge in the court christian would award
 the party to paye damages for the beating, hee
 did against the statute. But admit that a man
 be excommuniced for a thing that the spirituall
 Court may award the party to make satisfacti-
 on of, as for the not inclosing of the Church
 yard, or for not apparelling of the church con-
 veniently: Then I think the party must make
 restitution, or lay a sufficient caution if he be a-
 ble or he be assolled: but if the party offer insuffi-
 ent amends, and haue his absolution, and the
 Judge will not make him his letters of abso-
 lution, if the excommunication be of Record
 in the Kings Court, then the king may write
 vnto the spirituall Judge, commanding him
 that he make the partie his Letters of abso-
 lution vpon paine of contempt: & if the said ex-
 communication be not of Record in the Kings
 Court, then the party may in such case haue
 his action against the Judge spirituall, for that
 he would not make him his Letters of abso-
 lution: but if he be not assolled, or if he be not able
 to make satisfaction, and therfoze the Judge
 spirituall will not assolle him, what the Kings
 Lawes may do in this case I am somewhat in
 doubt, & will not much speake of it at this time,
 but as I suppose, he may aswell haue his action
 in that case for the not assolling him, as where
 he is assolled, and that the Judge will not make
 him his Letters of absolution: and I suppose
 the same law to be where a man is accursed for
 a thing that the Judge had no power to accuse
 him

him in, as for Debt, Trespasse, or such other. Do. There he may haue other remedies, as a Præmunire facias, or such other, and therfore I suppose the other action lyeth not for him.

St. The Judge and the party may be dead, & then no Præmunire lyeth, & though they were alive, and were condemned in Præmunire, yet that should not auoid the excommungement: & therfore I thinke the action lyeth, specially if he be thereby delayed of actions that hee might haue in the Kings Court, if the said excommungement had not bin.

¶ Whether a Prælat may refuse a Legacie.

Cap. 33.

IT is mooued in the said sum, named Rosella in the title Alienatio 20 the 11. article, whether a pzelat may refuse a legacie, wherein diuers opinions bee recited there, which as mee thinketh, haue need after the laws of the realme to be more plainly declared. D. I pray thee shew me what the law of the realme will therein. St. I thinke that euery Pzelat and soveraign that may onely sue, and bee sued in his owne name, as Abbots, Bishops, and such other, may refuse any legacie that is made to the house: for the legacie is not perfect till hee to whom it is made assent to take it, for else if hee might not refuse it, hee might bee compelled to haue lands whereby he might in some case haue great losse
but

The 33. Chapter.

but then if he intend to refuse, he must as soone as his title by the legacie falleth, relinquish to take the profits of the thing bequeathed, for if one take the profits thereof, he shall not after refuse the legacie: but yet his successor may if hee will refuse the taking of the profits to save the house from peevish damages, or from arrerages of rents, if any such be: & like law is of a remainder, as is in legacie, for though in y^e case of a remainder, & also of a devise as most men say, the freehold is cast upon him by the law when the remainder or devise falleth: yet it is in his liberte to refuse the taking of the profits, and to refuse the remainder if he will as he might do of a gift of lands, or goods, for if a gift be made to a man that refuseth to take it, the gift is void, & if it be made to a man that is absent, the gift taketh no effect in him till hee assent: no more than if a man disseise one to another man able, hee to whose use the disseisin is made, hath nothing in the land, ne is no disseisor till hee agree: And to such disseisins & gifts, an Abbot or Prior may disagree, as well as any other man. But after some men a bishop, of a devise, or remainder that is made to the bishop, and to the Deane and Chapter, nor a Deane and a chapter of a devise, or remainder made to them, ne yet the master of a colledge of such a devise, or remainder made to him & to his brethren, may not disagree without the Chapter or brethren: for the Bishop of such land as hee hath with the Deane and chapter, ne the Deane nor master of such land as they have with the Chapter or brethren may not answers without the

the

the chapter & brethren : & therefore some say that if the Deane or master will refuse, or disclaime in the lands that they haue by the Deuise or remainder, that disclaimer without the chapter or brethren is void. And therefore it is holden in the law, that if a Bishop be bound to warrant, & the tenant bindeth him to the warranty by reason of a lease made to him by the Bishop, and by the Deane & the chapter, paying a rent, that in that case the Bishoppe may not disclaime in the reuerſion without the assent of the Deane and Chapter : But yet if a reuerſion were graunted to a Deane & a Chapter, and the Deane refuse, the graunt is void. And so it appeareth that the Deane may refuse to take a gift, or graunt of lands, or goods, or of a reuerſion made to him and to the chapter, and yet he may not disagree to a remainder, or deuise, & the diuersitie is because the remainder and deuise be cast vpon him without any assent, whereupon neither the Deane or the Chapter by themselves, may in no wise disagree without the assent of the other : But a gift or grant is not good to them without they both assent, and in such gifts, as I suppose, an Infant may disagree as well as one of full age, but if a woman conuert disagree to a gift, and the husband agree, that gift is good. D. What if the lands by that case of a man and his wife be charged with damages, or bee charged with more rent than the land is worth, and the husband dye, shal the wife be charged to the damages, or to the rent? St. I thinke nay, if the wife refuse the occupation of the ground after her husbands death,

and

The 33. Chapter.

and I thinke þ same law to be, if a lease be made to the husband and the wife, pceding a greater rent than the land is worth, that the wife after the husbands death may refuse the lease to save her from the payment of the rent, & so may the successor of an Abbot. ¶ And if the husband in that case overthrow the wife, & the make his executors and he, whether may his executors in like wise refuse the lease. ¶ If they have goods sufficient of their testator to pay the rent, I thinke they may not refuse it: but if they have not goods sufficient of their testator to pay the rent to the end of the terme, I thinke if they relinquish the occupation, they may by speciall pleading discharge themselves of the rent & the lease, & if they doe not, they may lightly charge themselves of their owne goods. And if a lease bee made for terme of life, the remainder to an Abbot for terme of life of I. at S. reserving a greater rent than the land is worth, & after the tenant for terme of life dieth, the Abbot may refuse the remainder for the cause before rehearsed: and in case that the Abbot assent to the remainder, where by hee is charged to the rent during the time that hee is Abbot, and after he dyeth or is deposed, leaving the said I. at S. in that case his successor may discharge himselfe by refusing the occupation of the land, as is aforesaid. But I thinke that if such a remainder were made to a Deane, and to the Chapter, and the Deane agree without the assent of the Chapter, that in that case the Deane and the Chapter may afterwards disagree to the remainder, and that the act of the Deane
with

out the assent of the Chapter shall not charge the Chap. in þ behalfe. And thus it appeareth, though the meaning of the said chapter & article in the said summe be, that a Prelat may not disagree vnto a legacie, for hurting of a house, yet he may after the lawes of the realm disagree thereto, where it should hurt his house. And if in a Præcipe quod reddat, there be but one tenet be he spirituall or tempozall, & he refuse by way of disclaimer, in such case where hee may disclaime by the law, there the land shal best in the demandant: & if there be 2. tenants, then it shal best in his felloso, if hee will take the whole tenancy vpon him, or els it shal best in the demandant. But if an Abbot or lay man refuse the taking of the profits, and shew a speciall cause why it should hurt him if he do assent, and bee thereby discharged as is said before: in whom the land shal then best it is moze doubt, whereof I will no farther speak at this time. And thus it appeareth by diuers of the cases that be put in this chapter, that hee that is ignozant in the law of the realm, shall lacke the true iudgement of conscience in many cases. For in many of these cases that may be done therein by the law, must also be obserued in conscience &c.

¶ Whether a gift made vnder a condition be void if the soueraigne onely breake the condition.

Cap. 34.

IN summa Rosella in the title Alienatio, the 121 article, is asked this question, whether a gift

D

made

The 34. Chapter.

made vnder a certayne forme may bee annoyed
or reuoked, because the prelates or sovereigne
onely did breake the forme, and it is there an-
swered, that it may not, for that the deed of the
prelate onely ought not to hurt the Church:
and if those wordes (vnder a maner) bee vnder-
stood of a gift vpon condition as they seme to
bee; then the said solution holdeth not in this
realme neither in law nor conscience. D. What
is then the law of England if a man enfeoffe
an Abbot by deede indented, vpon condition,
that if the Abbot pay not the feoffor a certayne
summe of money at such a day, that then it
shall bee lawfull to the feoffor to reenter, and
at that day the Abbot faileth of his payment,
may the feoffor lawfully reenter and put out
the Abbot?

S. P. verily, for he had no right to the land,
but by the gift of the feoffor, and his gift
was conditionall; therefore if the condition be
broken, it is lawfull by the law of England for
the feoffor to reenter, and to take his land again
to hold it as in his first estate: by which re-
entry after the lawes of the realme, he dispo-
neth the first iuric of feign, and all the mesne acts
done betwixen the first feoffment and the re-
entry: and it forceth little in the Law, in whom
the default be that the condition was not per-
formed whether in the Abbot or in his consent,
or in both, or in any other person whatsoever
he bee, except it bee in the feoffor himselfe. And
it is great diuersitie betwixen a cleere gift made
to an Abbot without condition, and where it is
made with condition: for why it is made with-
out

out condition, the act of the Abbot onely shall not by the common law disherit the house, but it bee in verie few cases: but yet vpon diuers statutes the sufferance of the Abbot onely may disherit the house, as by his ceasser, or by leaping of a crosse vpon a house against the statute thereof made, in which case the house thereby shall leese the land, and some say that by the common law vpon his disclaimer in auowre, a writ of right of disclaimer lyeth, but if the gift be vpon condition, it standeth neither with law nor conscience, that the Abbot should haue any more perfect or sure estate than was giuen into him: and therefore as the said estate was made to the house vpon condition, so that estate may be annulled for not performing of the condition. And I thinke verily that this I haue said is to be holden in this reuerend, both in the Law and conscience, and that the decrees of the Church to the contrary, bind not in this case. But if the lands bee giuen to an Abbot, and to his Couent, to the intent to find a lamp, or to giue certaine almes to poore men, though the intent be not in those cases fulfilled, yet the scollar, nor his heire may not reenter: for hee suffered no reentrie by expresse words, ne in the words, when he said, to the intent to find a Lampe, or to giue almes &c. is implied no reentrie, ne the scollar, nor his heires shall haue no trouble in such cases, vntill it bee within the case of the Statute of Westmink. the secde, that giueth the Cessauit de Cantaria.

Q.

Wha

The 35. Chapter.

¶ Whether a covenant made vpon a gift to the Church, that it shall not bee aliened, be good.

Cap. 35.

In the said summe, called summa Rosella, the said title Alienatio, the 13. article, is asked this question, whether a covenant made vpon a gift to the Church, that it shall not be aliened, be good. And the same questiō is moved againe in the said summa called Rosella, in the title Cōditio the first article, & in summa Angelica, in the title Donatio prima, the 51. & 52. articles, & the intent of the question there, is whether notwithstanding that the condition be good to some alienations, whether that yet it be good to restrain alienations for the redemption of the p̄ bee in captivity vnder the Infidels, or for the greater aduantage of the house: and though the better opinion be there, & the cōdition may not bee broke for redemption of them that be in captivity, yet it is in manner a whole opinion that it may be sold for the greater aduantage to the house: for it is said there that it may not be taken, but that the intent of the giuer was so and therefore they call the condition that prohibiteth it to be sold, *conditio turpis*, that is to say, a vile condition, & therefore they regard it not: but hereby as I take it, if a condition may restrain any manner of alienation, then it shall as well restrain Alienations for the two causes before rehearsed, as for any other causes: and though me thinketh that the condition is good, &
after

after the lawes of the Realme, that vpon gifts to the Church restraineth alienations, yet I shall touch one reason that is made to the contrary, that is this: There is a cleere ground in the law, that if a feoffment be made to a common person in fee, vpon condition that the lessee shall not alien to no man, that condition is voyd, because it is contrarie to the estate of a fee simple, to bind him that hath the estate, that hee should not alien if he list: and some say that an Abbot that hath land to him and to his successors hath as high and as perfect a fee simple as hath a lay man that hath Land to him and to his heires, and therefore they say, that it is as well against the Law of the Realme to prohibit that the Abbot shall not alien, as it is to prohibit a lay man thereof: and though it bee therein true as they say, as to the highnesse of the estate, yet mee thinketh there is a great difference betweene the cases concerning their alienations: for when lands be given in fee simple to a common person, the intent of the Law is that the feoffee shall haue power to alien, and if he doe alien, it is not against the intent of the Law, ne yet against the intent of the lessor: but when lands be given to an Abbot and to his successors, the intent of the law is, and also of the giver (as it is to presume) that it should continue in the house for ever, and therefore it is called Mortmain, that is to say, a dead hand, as who saith that it shall abide there alway as a thing dead to the house. And therefore as I suppose the law will suffer that condition to be good, that is made to restrain that such Mort-

The 35. Chapter.

main should not be aliened, and that yet it may prohibite the same condition to bee made vpon a feoffment made in fee simple to a man & to his heires: for that is the most high, the most free, & the most pure estate that is in the Law. But the Law suffereth such a condition to bee made vpon a gift in fee because the Statute prohibiteth that no alienation should bee made thereof. And then, as the Law suffereth such a condition vpon gift in Mortmain, that is to say, that it shall not be aliened, to be good: then it indgeth the condition also according to the words, that is to say, if the condition bee generall that then shall alien to no man, as this case is, that it shall be taken generally according to the words and it shall not be taken, that the intent of the giver was otherwise than here expressed in his gift: though percase if hee were alive himselfe, and the question were asked him whether hee would bee contented it should bee aliened, for the said two causes or not, hee would say ye, but when he is dead no man hath authoritie to interpret his gift otherwise then the law suffereth, nor otherwise than the words of the gift bee. And if the condition be speciall that is to say, that the land shall not bee aliened to such a man or such a man, then the condition shall bee taken according to the words, & then they may bee aliened as for that condition to any other, but to them to whom it is expressly prohibited that the land should not bee aliened to. And if the Lands in that case be aliened to one that is not excepted in the condition, the hee may alien the land to him that is first excepted.

Without breaking of the condition, for conditions be taken straitly in the law and without equitie. And thus we thinke, that because the said condition is generall, and restraineth all allegations, that it may not bee aliened neither by the law of the Realme, ne yet by conscience, nor more for the sayd two causes, than it may for any other cause: and this case must of necessity bee iudged after the rules and grounds of the Law of the Realme, and after no other Law as nice seemeth.

¶ If the Patron present not within 6. moneths,
who shall present.

Cap. 36.

¶ In the same sum, called Summa Rosella, in the little Beneficium, in principio, it is asked, if the patron present not within six moneths, who shall present, and within what time the presentment must be made. And it is answered there, that if the patron present not within six moneths, that the Chapter shall have six moneths to present, and if the Chapter present not within six moneths, that then the Bishop shall have other six moneths: And if he be negligent, then the Metropolitane shall have other six moneths, and if present not, then the presentment is devolte to the Patriarke: And if the Metropolitane have no superior under the Pope, then the presentment is devolte to the

The 36. Chapter.

Pope. And so, as it is said ther, the Archbishop shall supply the negligence of the Bishop, if he be not exempt, and if he be exempt, the presentment immediately shall fall upon the Bishop, to the Pope. And as I suppose these diversities hold not in the lawes of the realme. Do. Then I pray thee shew mee who shall present by the Lawes of the realme, if the patron do not present within 6 moneths? Stu. Then for default of the patron the bishop shall present vnles the King be patron, and if the Bishop present not within sixe moneths, then the Metropolitan shall present, whether the Bishop be exempt or not. And if he Metropolitan present not within the time limited by the Law, then there bee diuers opinions who shall present, for some say the Pope shall present, as it is said befoze, and some say the King shall present.

D. What reason make they that say the king should present in that case? St. This is their reason, they say that the King is patron paramount of all the benefices within the realme. And they say farther, that the King and his progenitors kings of England, without time of mind, haue had authoritie to determine the right of patronages in this Realme in their owne Courts, and are bound to see their Subjects haue right in that behalfe within the realme, and that in that case from him lyeth no appeale. And then they say, that if the Pope in this case should present, that then the King should not onely leese his Patronage paramount, but also that he should not sometime be able to doe right to his subjects.

D. In

D. In what case were that? S. It is in this case: The Law of the Realme is, that if a benefice fall void, & the patron shall present within 6. moneths, and if he doe not, that then the Ordinarie shall present, but yet the Law is farther in this case, that if the Patron present before the Ordinarie put in his Clerke, that then the Patron of right shall enjoy his presentment, and so it is though the time should fall after to the Metropolitan, or to the Pope, and if the presentment should fall to the Pope, then though the Adversion abode still void, so that the Patron might of right present, yet the Patron should not know to whom hee should present, vnielſe hee should goe to the Pope, and so hee should faile of right within the Realme. And if percase hee went to the Pope, and presented an able Clerk vnto him, and yet his Clerke were refused and another put in at the collation of the Pope, or at the presentment of a stranger, yet the Patron could haue no remedie for the wrong within the Realme, for the Incumbent might abide still out of the Realme. And therefore the law will suffer no Title in this case to fall to the Pope. And they say, that for a like reason it is, that the Law of the Realme will not allow an excommungement that is certified into the Kings Court vnder the Popes Bulles: For if the partie offered sufficient amends, and yet could not obtaine his letters of absolution, the King should not know to whom to write for the letters of Absolution, and the party could not haue right, and that the Law will in no wise

The 36. Chapter.

will suffer. Doct. The patron in that case may
 present to the Ordinarie as long as the church
 is void, and if the ordinarie accept him not, the
 Patron may haue his remedie against him
 within this Realme. But if the Pope will put
 in an Incumbent before the patron present, it
 is reason that he haue the presentment, as mee
 seemeth before the king. S. When the Ordina
 rie hath surcelled his time, hee hath lost his
 power as to that presentment, specially if the
 collation bee deuolue to the Pope. And also
 when the presentment is in the Metropolitane
 hee shall put in the Clerke himselfe, and not the
 Ordinarie: and so there is no default in the
 Ordinarie, though he present not the Clerke of
 the Patron, if his time be past, and so there ly
 eth no remedie against him for the Patron.

D. Though the Incumbent abide still out of
 the realme, yet may a Quare impediri lie against
 him within the realme: and if the Incumbent
 make default vpon the distresse, and appears
 not to shew his title, then the patron shall haue
 a writ to the Bishop according to the statute,
 and so he is not without remedie.

S. But in this case hee cannot be summoned
 attached, nor distrained, within the Realme.
 D. He may be summoned by the church, as the
 tenant may in a writ of right of Aduofolon.
 St. There the aduofolon is in demaund, & here
 the presentment is onely in debate: and so hee
 cannot bee summoned by the Church here no
 more than if it were in a writ of Annuity, and
 there the common returne is, quod Clericus est
 beneficiatus, non habens laicum locū ubi potest
 sum-

summoneri. And though he might bee summon-
 ned in the Church, yet he might neither be at-
 tached nor distrayned there, and so the patron
 should be without remedie. V. And if he were
 without remedie, hee should yet be in as good
 case as he should be if the King should present:
 for if the title should be given to the King, the
 Patron had lost his presentment clerly for the
 time, though the church abide still void. For
 I have heard say that in such presentments
 no time after the Law of the Realme runneth
 vnto the King. Sr. That is true, but there the
 presentment should be taken from him by right
 and by the Law, and here it should be taken
 from him against the Law, and there as the
 Law could not help him, and that the law will
 not suffer. V. Yet me thinketh alway that the
 title of the Laps in such case is given by the
 law of the Church, & not by the temporall law,
 & therfore it forceth but little what the temporall
 law will in it, as mee seemeth. S. In such coun-
 tries where the Pope hath power to deter-
 mine the right of temporal things, I thinke it
 is as thou saist, but in this Realme it is not so.
 And the right of presentment is a temporal thing,
 and a temporal inheritance, & therfore I thinke
 it belongeth to the Kings law to determine, &
 also to make Lawes who shall present after 6.
 moneths aswell as before, so that the title of
 excommunication of abilitie or nonabilitie be not
 thereby taken from the Ordinarie. And in like-
 wise it is of avoidance of benefices, that is to
 say, then it shalbe iudged by the Kings Lawes
 when a benefice shall be said void, & when not,
 and

The 36. Chapter.

and not by the law of the Church, as when a parson is made a Bishop, or accepteth another benefice without a Licence, or resigneth, or is depriued, in these cases the common law saith, that the benefice is void, and so they should bee, though a law were made by the Church to the contrarie: and so if the Pope should haue any title in this case to present, it should bee by the Law of the Realme. And I haue not seene ne heard that the law of the Realme hath giuen any title to the Pope to determine any temporall thing that may bee lawfully determined by the Kings Court. D. It seemeth by that reason that thou hast made now, that thou preferrest the Kings authoritie in presentments befoze the Popes, & that me thinketh should not stand with the law of God, with the Pope is the Vicar generall vnder God. Stu. That I haue said proueth not, that for the highest preferment in presentments hee is to haue authoritie to examine the abilitie of the Parson that is presented: for if the presenter be able, it sufficeth to the discharge of the Ordinarie, by whom soener hee be presented, and that authoritie is not denied by the law of the Realme to belong alway to the spirituall iurisdiction. but my meaning is, that as to the right of presentments, and to determine who ought to present, and who not, and at what time, and when the Church shall be iudged to be void, & when not, belong to the King and to his lawes: for else it were a thing in vaine for him to hold plee of Adversions, or to determine the right of patronage in his owne courts, and not to haue authoritie to determine the

the right thereof, and those claimes seemeth not to be against the Law of God. And so mee seemeth in this case the presentment is given the King. D. And if the King should have right to present, then might the Church happen to continue void for ever, for as wee have said before no time runneth to the King in such presentment. Sr. If any such case happen, if the King present not, then may the Ordinary set in a deputy to serve the cure as he may do when negligence is in other patrons that may present & doe not: and also it cannot bee thought that the King which hath the rule and governaunce over the people, not onely of their bodies, but also of their soules, will hurt his conscience and suffer a benefice continually to stand without a Curat, no more than he doth in Adowsons that be of his owne presentment.

¶ Whether the presentment and collation of benefices and dignities, voiding at Rome belongeth onely to the Pope.

Cap. 37.

In the same law, called Súma Rosella, in the title Beneficium primū, in the 13. article, It is said þ benefices, dignities, & parsonages, voiding in the court of Rome may not be given but by the Pope: & likewise of the Popes servants and of other that come and goe from the Court, if they die in places nigh to the Court within two daies journey, all these belong to the Pope: but if the Pope present not with-
in

The 37. Chapter.

in a month, then after the moneth they to whom it belongeth to present, may present by themselves onely, or by their vicar generall if they be in far parts: and these sayings hold not in the law of the Realme. **¶** What is the cause that they hold not in this realme, aswell as in all other realmes? **¶** One cause is this: The king in this realme according to the ancient right of his Crowne, of all his aduowens that bee of his patronage ought to present. And in like wise other Patrons of benefices of their presentment, & the pleas of & right of presentments of benefices within this Realme, belong to the King and his crowne. And these titles cannot bee taken from the King and his subjects, but by their assent, and the law that is made therein to put away the title. bindeth not in this realme. And ouer that, befoze the statute of 25. E. 3. there was a great inconuenience and mischief, by reason of diuers prouisions & reservations, that the Pope made to the benefices of this Realme, contrarie to the old right of the King and other patrons of this Realme. aswell to the Archbishopps, Bishopps, Deanries and Abbies, as to other dignities & benefices of the Church: And many times sithens thereby had benefices within the Realme that vnderstood not the English tongue, so that they could not counsaile ne comfort the people, when need required, and by that occasion great riches was conueyed out of the Realme: wherefoze to auoid such inconuenience, it was ordained by the said statute, that all patrons aswell spirituall as temporall should haue the presentment

ments freely: & in case the collation or prouision were made by the Pope in disturbance of any Spirituall Patron, that then for that time the King should haue the presentment, & if it were in disturbance of any lay Patron, that then if the patron presented not within the halfe yeare after such vouchance, nor the Bishop of the place within a moneth after the halfe yeare: that then the king should haue also the presentment, and that the king should haue the profits of the benefices so occupied by prouision, except Abbeyes and Priories, & other houses that haue colledge and couēt, & there the colledge & couēt to haue the profits: and because the statute is generall, & excepteth no such benefices as shall void in the Court of Rome, or in such other place as before appeareth, therefore they be taken to bee within the prouision of the said estatute aswell as the benefices that void within the Realme: & all prouisoꝝ and executoꝝ of the said collations & prouisions, & all their attornies, notaries & maintainers, shalbe out of the proteccion of King, & shall haue like punishment as they should haue for executting of benefices bording with in the realm. D. But I cannot see how the said statute may stand with conscience, that so farre restrained the Pope of his libertie, which as mee seemeth hee ought in this case of right to haue. St. Because (as I suppose) that patrons ought of right to haue their presentments, but in such manner as they claime them in this realm, as I haue said before, and as in the 26. chapter of this booke appeareth moze at large: And also soasmuch as it appeareth evidently,

that

The 38. Chapter.

that great inconuenience folloved vpon the said pꝛouissions, and that the said estatute was made to auoide the saame, which sith that time hath bene suffered by the Pope, and hath ben alwayes in this realme without resistance, that the said estatute should therfoze stand with good conscience.

¶ If a house by chaunce fall vpon a horse that is borrowed, who shall beare the losse.

Cap. 38.

In the said summe called Summa Rosella, in the title Casus fortuitus, in the beginning is put this case. If a man lend another a horse, which is called there Depositum, & a house by chance faileth vpon the horse, whether in that case hee shall answer for the horse? And it is answered there, that if the house were like to fall, that then it cannot be taken as a chance, but as the default of him that had the horse delivered to him: But if the house were strong, & of likelihood and by common presumption in no daunger of falling, but that it fell by sodaine tempest, or such other casualtie, that then it shall bee taken as a chance, and hee that had the keeping of the horse shall be discharged: & though this diuersitie agreeth with the Lawes of the Realme, yet for the moze plainer declaration therof, and for the moze like cases and chances that may happen to goods, that a man hath in

in his keeping that be not his owne. I shall add
 a litle moze thereto, that shalbe some what neces-
 sarie as mee thinketh to the ordering of consci-
 ence. First a man may haue of another by way
 of lome or borroweing, money, corne, swine, and
 such other things, where the same thing cannot
 be deliuered if it be occupied, but anoth. r thing
 of like nature and like value must be deliuered
 for it, & such things he that they be lent to, may
 by force of the lome vse as his owne. And there-
 fore if they perish, it is at his leoparchie, & this
 is most properly called a lome. Also a man may
 lend to another a horse, an oxe, a cart, or such o-
 ther things that may be deliuered againe, and
 they by force of that lome may be used and occu-
 pied reasonably in such manner as they were
 borrowed for, or as it was agreed in the time of
 the lome that they should be occupied, & if such
 things be occupied otherwise thā according to
 the intent of the lome, & in that occupation they
 perish, in what wise soeuer they perish, so it be
 not in default of the owner, hee that borrowed
 them shall be charged therewith in law & consci-
 ence: & if he that borrowed them occupy thē in
 such manner as they were lent for, & in that oc-
 cupation they perish in default of him that they
 were lent to, then hee shall answer for them:
 and if they perish not through his default, then
 hee that oweth them shall beare the losse. Also
 if a man haue goods to keepe to a certaine day,
 for a certaine recompence for the keeping, hee
 shall stand charged or not charged, after as de-
 fault or not default shall bee in him as befoze
 appeareth, and so it is if hee haue nothing

The 38. Chapter.

for the keeping, but if hee haue for the keeping,
& make promise at the time of his deliuerie to re-
deliuer them safe at his perill, then he shall bee
charged with all chances that may fall. But if
he make that promise & haue nothing for keep-
ing, I thinke he is bound to no such casualties
but that he wilfall & his owne default, for that
is a nude, or a naked promise, whereupon as I
suppose no action lieth. Also if a man find goods
of another, if they bee after hurt or lost by wil-
full negligence, he shall be charged to the owner,
but if they be lost by other casualty, as if they be
laied in a house that by chaunce is burned, or if
hee deliuer them to another to keepe & runneth
away with them, I thinke he be discharged: and
these diuersities hold most commonly vpon pled-
ges, or where a man hireth goods of his neigh-
bor to a certain day for certain money: & many
other diuersities bee in the law of the Realme,
what shall be to the leoparde of the one, & what
of the other, which I will not speake of at this
time: And by this it may appeare that it is co-
monly holden in the laws of England if a com-
mon carter go by the waies that be dangerous
for robbing, or by night, or in other inco-
nvenient time, & be robbed, or if he overcharge a
horse, whereby hee falleth into the water or o-
therwise, so that the stufte is hurt or impaired:
that hee shall stand charged for his misdemea-
nour, and if hee would percase refuse to carry
it, vnieste promise were made vnto him that he
shall not bee charged for no misdemeaunour that
should bee in him, the promise were void: for
it were against reason & against good manners.

and

and so it is in all other cases like. And all these diuersities be granted by secundary conclusions herited vpon the Law of reason, without any statute made in that behalfe. And peraduenture lawes, and the conclusions therein, be the moze plaine & the moze open. For if any statute were made therein, I thinke verily no doubts & questions would rise vpon the statute, than both now when they be onely argued & iudged after the common law.

¶ If a Priest haue won much goods by saying of Masse, whether hee may giue those goods or make a will of them.

Cap. 39.

In the said law called Summa Rosella in the title Clericus quartus the third article, is asked this question: If a priest haue won much goods by saying of masse, whether he may giue those goods, or make a will of them? whereto it is answered there, that hee may giue them, or make a will of them, specially when a man bequeaths money for to haue Masses said for him: & the like law is of such things as a clerke winneth by the reason of an office: For it is sayd there, that such things come to him by reason of his owne person: which sayings I thinke accord with the law of the realm. But forasmuch as in the said article & in diuers other places of the said chapter, & in diuers other chapters of the said Summe, is put great diuersitie betwene such goods, as a Clerke hath by reason of his

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Church

The 39. Chapter.

church, and such goods as hee hath by reason of his person, & that hee must dispose such goods as he hath by reason of his church in such manner as is appointed by the lawe of the Church, so that he may not dispose them so liberally, as he may the goods he come by reason of his owne person, therefore I shal a little touch what spiritual men may doe with their goods after the lawe of the Church.

First a Bishop, of such goods as he hath with the Deane and Chapter, hee may neither make gift nor bequest, but of such goods as hee hath of his owne by reason of his church, or of a gift of his auncestors or of any other, or of his patrimony, hee may both make gifts and bequests lawfully. And an Abbot of the goods of his Church may make a gift, and that gift is good as to the Law: But what it is in conscience, that is after the cause and intent and qualitie of the gift, for if it bee so much that it notably hurteth the house or the convent, or if he give away the bookes, or the chalices, or such other things as belong to the service of God, he offendeth in conscience, and yet hee is not punishable in the Law, he yet by Subpena after some men, not in none other wise but by the Law of the church, as a waster of the goods of his monastrie. But nevertheless I will not fully hold that opinion, as to that that belongeth necessarily to the service of God, whether any remedy be against him or not, but remit it to the iudgement of other. And of a Deane & Chapter, and a Prior & Brethren of goods that they haue to themselves, & also of goods that they haue with
the

the Chapter & brethren, the same diuersitie holdeth, as appeareth befoze of a Bishop and the Deane & Chapter, except that in the case of a Master & brethren the goods shalbe ordered as shalbe assigned by the foundation. And mozeouer, of a Parson of a Church, Vicar & Chantry Priest, or such other, all such goods as they haue aswell such as they haue by reason of the Parsonage, Vicarage, or Chaurtrie, as that they haue by reason of their owne person, they may lawfully giue and bequeath where they will after the common law: And if they dispose part among the parishioners, & part to the building of Churches, or giue part to the Ordinarie, or to poore men, or in such other manner, as it is appointed by the law of the church, they offend not therein, vntlesse they think themselves bound thereto by dutie, & by authoritie of the law of the church, nor regarding the Kings Lawes, for if they do so, it seemeth they resist the Ordinances of God, which hath giue power to princes to make lawes: but there as the Pope hath souerainty in temporall things, as hee hath in spirituall things, there some say that the goods of such must in conscience be disposed as is contained in the said summe, but that holdeth not in this Realme: for the goods of spiritual men bee temporall in what manner soeuer they come to them, & must be ordered after the temporall law as the goods of the temporall men must be. Howbeit if there were a statute made in this case of like effect in many points, as the law of the Church is, I thinke it were a right good and a profitable Statute.

The 40. Chapter.

¶ Who shall succeed a Clerke that dyeth intestate.

Cap. 40.

In the said Law called Rosella in the chapter Clericus quart the 7. Article, is asked this question, who shall succeed to a Clerke that dyeth intestate, & it is answered, that in goods gotten by reason of the church, the church shall succeed. But in other goods his kinsmen shall succeed after the order of the law, & if there bee no kinsman, then the church shall succeed. And it is said further, that goods gotten by a Canon secular by reason of his church or prebend shall not go to his successor in the prebend, but to the Chapter. But where one that is beneficed is not of the congregation, but hee hath a benefice clearly separte, as if he be a parson of a parish Church, or is a president, or an Archdeacon not beneficed by the Chapter, then the goods gotten by reason of his benefice, shall go to his successor, & not to the Chapter, and none of these sayings hold place in the laws of England. What is then the Law, if a Parson of a Church, or a Vicar in the Countrey dye intestate, or if a Canon secular bee also a Parson and haue goods by reason thereof, and also by a Prebend that he hath in a Cathedral Church, & hee dye intestate, who shall haue his goods? S. At the common Law the Ordinary in all these cases may administer the goods, and after hee must commit administration to the next

next faithfull friends of him that is dead intestate that will desire it, as hee is bound to do where lay mē h̄ haue goods die intestate. And if no man desire to haue administration, then the Ordinarie may administer, & see the debts payed, and hee must beuare that he pay the debts in such order as is appointed in the common Law: for if hee pay debts vpon simple contracts before an Obligation, he shall be compelled to pay the debt vpon the obligation of his owne goods, if there bee no goods sufficient of him that died intestate, and though it be suffered in such case that the Ordinarie may pay pound and pound like, that is, to appoition the goods among the debtors after his discretion, yet by the rigor of the common Law, hee might be charged to him that can first haue his indgement against him. And furthermore by that is said afore in the last Chapter it appeareth that if a Bishop that hath goods of his patrimony, or a master of a Colledge, or a Deane of goods, that they haue of their owne onely to themselves dye intestate, that the Ordinarie shall commit administration thereof, as before appeareth, and if they make Executors, then the executors shall haue the ministration thereof: But the heires nor the kinsmen by that reason onely that they be heires or of kin to him that is deceased, shall haue no meddling with his goods, except it be by custome of some countries where the heires shall haue their lons, or where the children (the debts & legacies payed) shall haue a reasonable part of the goods after the customs of the countrie.

The 41. Chapter.

¶ If a man be outlawed of felonie, or be attained for murder or felonie, or that is an Ascismus, may be slaine by euery stranger.

Cap. 41.

It appeareth in this said sum called Summa Angelica in the 21. Ch. in the title of Ascismus the 2. Paragrafe, that hee is an Ascismus that will slay men for money or the instance of euery man that will moue him to it, and such a man may lawfully be slaine, not onely by the Iudge, but by euery private person. But it is said there in the 4. paragrafe, that hee must first be iudged by the law as an Ascismus ere he may be slaine, or his goods seised. And it is said farther there in the 2. paragrafe, that also in conscience such an Ascismus may bee slaine if it bee done through a zeale of iustice, and else not. Is not the law of the realme likewise of men outlawed, attainted, or iudged for felony?

St. In the law of the realme there is no such Law, that a man shall bee iudged as an Ascismus, ne if a man be in full purpose for a certain summe of money that he hath receiued, to slay a man, yet it is no felonie, ne murder in the law till he hath done the act: for intent of felony nor murder is not punishable by the common Law of the Realme, though it bee deadly sinne before God, but in Treason or in some other particular cases by Statute that intent may bee punished. And though a man in such a case kill a man for money: yet it shall not bee admitted that he

hee is an Ascismus for as it is sayd before, there is no such terme of Ascismus in the lawe of the Realme, but he shall in such case be arraigned upon the murder. And if he confesse it or plead that he is not guiltie, & is found guilty by xij. men, hee shall haue iudgement of life, and of member, and shall forfeit his lands and goods. And like Law is of an Appraile brought of the murder, if hee stand dumbe and will not answer to the murder, hee shall bee attainted of the murder, and shall forfeit life, lands & goods: But if he be arraigned of the murder upon an Indictment at the Kings suit, and therupon standeth dumbe and will not answer, there he shall not be attainted of the murder, but he shall haue paine fozt and dure, that is to say, hee shall be pressed to death, and he shall there forfeit his goods, and not his lands. But in none of these cases (that is to say) though a man bee Outlawed for murder or felony, or bee abjured, or that hee bee otherwise attainted: yet it is not lawfull for any man to murder him, or slay him, ne to put him in execution but by authoritie of the Kings Lawes. Insomuch that if a man bee adiudged to haue paine fozt and dure, and the Officer beheadeth him, or on the contrariwise putteth him to payne fozt and dure, where hee should behead him, hee offendeth the lawe And if an Officer which hath authoritie to put a man to death, may not put him to death but according to the iudgement, then mee thinketh it should follow that more Stronger a stranger may not put such a man to death of his owne authoritie without commandement of

The 42. Chapter.

of the Law. But if the iudgement bee that hee shall be hanged in chaines, & the officer hangeth him in other things and not in chaines, I suppose he is not guiltie of his death: But some say he shall there make a fine to the King, because hee hath not followed the wordes of the iudgement.

Also if a man that is no officer would arrest a man that is outlawed, abjured, or attainted of murder or felony, as is aforesaid, & he disobeyeth the arrest, & by reason of the disobedience he is slaine, I suppose the other shall not be impeached for his death: for it is lawfull vnto euery man to take such persons & to bring them forth that they may bee ordered according to the law. But if a Capias be directed vnto the Sheriffe to take a man in an action of debt or trespass, there no man may take the man, but hee haue authoritie from the Sheriffe: and if any man attempt of his owne authoritie to take him, & he resisteth, & in the resisting is slaine, he that would haue taken him is guiltie of his death.

¶ Whether a man shall bee bounden by the act or offence of his seruant or officer.

Cap. 42.

In the said summe called Summa Angelica, in the title Dominus iiii. Paragrase, is asked this question, whether a man shall be charged for his household: and it is said that there he shall when the household offendeth in an office or ministerie

mistry that the Master is the chiefe officer of,
 and he hath the worke and the profit of the hon-
 shold: For it shall be his default that he would
 chuse such seruants, for hee ought to appoint
 honest persons: But it is said there, that it is
 to be vnderstand chully, & not criminally, where-
 by, as is sayd there, he that is a governour is
 bound for the offence of his officers, & that the
 same is to be holden of a Capitaine, that he shall
 be bound for the offence of his squires, and an
 host for his guest, and such other. Nevertheless
 it is said there, that certaine Doctors, there re-
 hearsed, said thereto, that if the office be an open
 or publike office, as an office of power, or other
 like, It sufficeth to bring forth him that of-
 fended: But it is otherwise if it be not a pub-
 like office, but an host or a Taverner, or other
 like. But if the household offend not in the office
 the Lord is not bound as to the Law, but in
 conscience he is bound if hee were in default by
 not correcting them, for hee is bound to correct
 them both by word and example, and if hee find
 any incorrigible, hee is bound to put him away,
 except that he haue presumptions, that if hee
 doe so, he will be the worse, and then hee may
 doe that he thinketh best, as he is excused, and
 else not: For to such persons it is said, Error qui
 non resistitur, approbatur: (that is to say) an
 Error that is not resisted, is approued. And
 though diuers of the sayings before rehearsed
 agree with the Law of the Realme, yet all doe
 not so, and also they that do are to be obserued
 by authoritie of the law of the realme, & not by
 the authoritie alledged in the said Paragraphe.

The 42. Chapter.

And therfore I intend to treat somewhat where the Master shall be charged by his servant, or deputie, or by them that be vnder him in any office, & where not, and then I intend to touch some other things, where the Master after the Lawes of the Realme shall be charged by the act of his servant in other cases not concerning offices, and where not.

First, if a man be committed to ward vpon arrerages of accompt, & the keeper of the prison suffereth him to goe at large, then an action of debt shall lye against him. And if he be not sufficient, then it lyeth against him that committed the keeping of the prison vnto him, and that is by reason of the Statute of West. the 2. ca. 11. Also if Bailles of Franchises that haue Returne of Writs make a false returne, the partie shall haue auerement against it, as well of too little issues as of other things, as well as he shall haue against the Sherife, but all the punishment shall be onely vpon the baille, & not vpon the Lord of the Franchise, and that doth appere by the Statute made in the first yeare of King Ed. 3. the 1. chapter. But if an vnder Sherife make a returne whereupon the Sherife shall be amerced, there the high Sherife shall be amercied, for the returne is made expresse in his name. But if it be a false returne whereupon an action of disseint lyeth, in that case it may be brought against the vnder Sherife. And see therof the Statute that is called Statutum de male returnantibus breuia.

Also if the kings Butler make deputies, hee shall answere for his deputies as for himselfe,

as appeareth in the statute made in the 21. yere of King Edward the 3. De prodicionibus the 21. Chapter.

Also, in þe statute that is called Statutu Scaccarii it is enacted among other things, that no officer of the Exchequer shall put any clerk vnder him, but such as he will answer for. And forasmuch as the statute is generall, it seemeth that he shall answer as wel for an vntut in any such clerke as for an oversight.

Also in the 14. yere of King E. the 3. cap. it is enacted, that all Gailes shall be appointed again to the Shires, and that the Sherife shall haue the keeping of them, and that the Sherife shall make such vndergardeins for the which they will answer. And neuerthelesse I suppose that if there be an escape by default of the gailler, that the king may charge the Gailler if hee will. But it is no doubt but hee may charge the Sherife by reason of this statut if he will. But if it bee a wilfull escape in the Gailler which is felonie in him, the Sherife shal not be bound to answer to the felonie, ne none other but the Gailler himselfe, and they that assented to him.

Also if a man haue a Sherifswicke, Constableshyp, or Baylswicke in fee, wherby he hath the keeping of prisoners, if he let any to replewin that bee not replewihable, and thereof be account, hee shall lose the office &c. And if it bee an Undersherife, Constable, or Bayliffe, that hath the keeping of the prison, that doth it without knowledge of the Lord, hee shall haue imprisonment by three yeres, and after shall be ransomed at the Kings will, as appeareth
in

The 42. Chapter.

In the statute of West. the 1. the 15. chap. And so it appeareth, that in this case, hee that is the Lord of the prison, is not bound to answer for the offence of them that haue the rule of the prison vnder him, but that they shall haue the punishment themselves for their misdeemeanor. Also there is a statute made in the 27. yeare of king Ed. 3. the 19. Chap. that is called the statute of the Staple, wherby it is ordained, that no Merchant, ne none other man shall not take their goods for the Trespas, or forfeit of their seruants vniess it be by commandement of his Master, or that hee offend in the office that his Master hath put him in, or else, that the Master shall be bound to answer for the deed of his seruant by the law merchant, as in some place it is used.

Also, it is enacted in the 14. yeare of King Edward the 3. the 8. Chapter, that wapentakes and hundreds that be severed from the Countiees, shall be adioined againe vnto them, and that if the Sherife hold them in his owne hands, that hee shall put in them such Bailifes that haue lands sufficient, and those for which hee will answer, and that if hee let them to ferme, that they be let to the auncient ferme: but after it is prohibited by the Statute of the 22. yeare of king Henry the 6. the 10. Chapter, That no Sherife shall let his Bailiwicks, nor wapentakes to ferme. And when they be once in the Sherifes owne hands, and the Sherife put in Bailifes, they be but as Underbailifes to the king, and the Sherife the high bailife, and they in maner the Sherifes seruants and put in
only

only by him: And therefore by the said Stat. of King Ed. the 3. hee shall answer for them, if they offend in their office, but if the Sherife let the to ferme, then though the Sherife offend the Statute in that doing, yet whether hee shall be charged for these misdemeanors in the office or not, is a great doubt in some men, for they say that this Statute is onely to be understood where the bailiwicks be in the Sherifes hands, but here they be not so, ne the bailifes be not his servants, but his fermours: And therefore they say, that if the Sherife shalbe charged for them, it is by the common Law, and not by the Statute aforesaid. Also in the 2. yeare of King Henrie the 6. the 14. Chap. it is enacted, that Officers by patent in every court of the King, that by vertue of their Office have power to make clerkes in the said courts, shalbe charged & swozne to make such clerkes vnder them, for whom they will answer. Also the Hospitallers & Templers be prohibited they shall hold no ples that belongs to the Kings Courts, vpon pain to yeld damages to the party grieved, & to make ranome to the king: that the superiours shal answer for their obediencers, as for their owne deed. West. 2. cap. 42. Also the Serieant of the Cately shall satisfie all the debt, damages, and executions that shall be recovered against any that is purueour, or achatour, vnder him that offend against the Statute of xxxvj. of Edw. the 1. or against the Statute of xxvij. of Henrie the 6. in case the purueour, or achatour be not sufficient &c. And the partie plaintiffe shall haue a Scire facias against the said
 ser.

The 42. Chapter.

Sergeant in this case to haue execution, as app-
peareth in the 24. yeare of King Henry the vi.
the 1. chapter.

Also if a man bee sent to prison vpon a Sta-
tute merchant by the Mayor, befoze whom the
recognisance was taken, & the Bailor will not
receiue him, he shall answer for the debt if hee
haue any reasoun, & if not, then he shall answer
that committed the Gaile to him, as appeareth
in the Statute called the statute merchant.

And if Outragious tolle bee taken in the
towne Merchant, if it be the King & towne let
to ferme, the King shall take the franchise of the
Market into his hands: And if it be done by
the Lord of the Towne, the King shall doe in
like sorte: And if it be done by the Bailife, un-
knowing to the Lord, hee shall yeeld againe as
much as hee hath taken, and shall haue impri-
sonment of 40 dayes: And so it appeareth that
the Lord in this case shall not answer for
his Bailife, West. the 1. cap. 30. And in all the
cases befoze rehearsed, where the superiour is
charged by the default of him that is vnder
him, hee in whole default his superiour is so
charged, is bound in conscience to restore him
that is so charged through his default: except
the case befoze rehearsed of the Hospitallers, for
all that the obedience hath, is the superiours if
he shall take it. And therefore what recompence
there made by the obedience in that case, is al
at the will of the superiour. And now I intend
to shew thee some particular cases, where the
master after the lawes of this regime shall be char-
ged by the act of his servant, bailif, or deputy, &
where

where not: and so for to make an end of this Chapter.

Item, for trespassse of batteries, or wrongfull entrie into lands or tenements, ne yet for felony or murder, the master shall not be charged for his servant, vnielles hee did it by his commandement.

Also if a servant borrow money in his masters name, the Master shall not be charged with it, vnielles it come to his displeasure, that by his assent. And the same law is if the servant make a contract in his masters name, the contract shall not bind his master, vnielles it were by his masters commandement, or that it come to the masters displeasure by his assent. But if a man send his seruant to a faire or market, to buy for him certaine things, though hee commaund him not to buy them at no man in certayne, and the seruant doth according, the master shall be charged, but if the seruant in that case buy them in his owne name, not speaking of his Master, the Master shall not be charged, vnielles the things bought come to his displeasure.

Also if a man send his seruant to the market with a thing which he knoweth to bee defective to be sold to a certayne man, and hee selleth it to him, there an action lyeth against the Master: but if the Master bidde him not sell it to any person in certayne, but generally to whom hee saw, and hee selleth it according, there lyeth no action of defect against the master.

Also if the seruant beere the masters fire negligently, so that by his masters house is burnt and his neighbours also, there an action lyeth
 D against

The 42. Chapter.

against the Master. But if the seruant beart fire negligently in the street, and thereby the house of another is burned, there is no action against the Master.

Also, if a man desire to lodge with one, that is no common Hosteler, and one that is seruant to him that he lodgeth with, robbeth his chamber, his master shall not be charged for that robbing: but if he had been a common Hosteler he should have been charged.

Also, if a man be gardene of a prison, where in is a man that is condemned in a certain summe of money, and another that is in prison for Felonie, and a seruant of the gardene that hath the keye of the prison vnder him, wilfully letteth them both escape: in this case the gardene shall answer for the debt, and shall pay a fine for the escape of the other, as for a negligent escape, and the seruant onely shall be put to answer to the felony for the wilful escape.

Also, if a man make another his generall receiuer, and that receiuer receiue money of a creditour of his Master, and maketh him acquitance, and after payeth not his Master, yet that payment dischargeth the creditour: but if the creditour had taken an acquitance of him without paying him his money, that acquitance onely were no barre to the Master, vntill hee made him receiuer by writing, and gave him authoritie to make acquitances, and then the authoritie must bee showed. And if the creditour in such case by agreement be-
recei-

receiver a horse or another thing in recompence of the debt, that deliuerie dischargeeth not the creditor, vntlesse it be deliuered ouer vnto the Master, and hee agree to it. For the receiver hath no such power to make no such commutation, but his master gine him speciall commandement thereto.

Also, if a seruant shew a Creditor of his master, that his master sent him for his money, and hee payeth it vnto him, that payment dischargeeth him not, if the master did not sent him for it indeed, except that it come alter vnto the vble of the master by his assent.

Also, if a man make a bailife of a manor, and after the Lord of whom the Manor is holden grant the seigniozie to another, and the bailife after payeth the rent to the graunter, that payment of the rent counteruaileth no assourment though it were by fine, ne shall not bind his Master, till hee attorne himselfe: but if the Lord of whom the land is holden disceiued one of the seigniozie, and the bailife payeth the rent to the heire of the Lord, that is a good seisin to the heire, though the bailife had no commandement of his Master to pay it: for it belongeth to his office to pay rents seruice, but not rent charge as some men say.

Also, an encroachment by the bailife shall not bind the master in euoyment, if he had no commandement of the master to pay it. Also if there be Lord, mesne, and tenant, & the tenant holdeth of the mesne as of his manor of D. the mesne maketh a bailife, and after the tenant maketh a feoffment, the lessor tendereth notice to the bailife

The 43. Chapter.

And hee accepteth his rent with the arreages, this notice shall not bind the Lord, ne compell him to alter his custome: for the office of a bailie stretcheth not thereto, but hee must have therein a speciall com mandement of his Master. Also if a servant ride on his masters horse to doe an errand for his Master into a towne that hath authorite to make attachments of goods upon plaints of debt &c. and there vpon a plaint of debt made against the servant, the Masters horse is attached by the Officers, thinking that the horse were his owne, and because the servant appeareth not, the officers seile the horse as forsworn: in this case the Lord shall have an action of trespass against the officers, & this attachmet for the debt of his servant, shall not bind him or him that an host or keeper of a Taverne shalbe charged for their guests, but lesse it bee done by their assent or comendment, I do not remember that I have read it in the laws of England.

¶ Whether a villaine, or a bondman may
give away his goods.

Cap. 43.

It appeareth in the said sum, called Summa Magica, in the title Donatio prima the 9. Paragraphe, that a bondman, or a religious man, or a monk, ne such other that hath nothing in proper, may not give, but it bee by licence of their superiour: but that saying is not, as it is
said

says there, to be understood of Religious persons that haue lawfull ministratiō of goods, for they giue with a cause reasonable, it is good, but without cause they may not.

Also if they by the licence of the prelat with the counsell of the more part of the Couēnt abide at schoole or goe on pilgrimage, they may giue as other honest scholars and pilgrims be reasonably wont to doe: and they may also giue almes where there is great need, if they haue no time to aske licence.

Also if they see one in extreme necessity, they may giue almes though their superiours prohibite them, for then all things bee in common by the law of God And therefore they be bound for to doe it, as appeareth in the foresaid sum called Summa Angelica in the title Eleemosina, the 6 Paragrafe. Doth not the Law of England agree with these diuersities? Stu. Forasmuch as the question is onely made whether a Villaine or a bondman may giue away his goods or not: and it seemeth that after the foresaid sum, in the title which thou hast before rehearsed, that he no none other that hath no property may not giue, whereby it appeareth that the said summe taketh it, that a bondman should haue no property in his goods, and that therefore his gift should bee void, I shall somewhat touch what property and what authority a Villaine hath in his goods after the Law of the Realme, and what authority the Lord hath ouer them. And I will leaue the diuersities that thou hast remembered before of Religious persons to them that list to treat

Further therein hereafter.

First if a Villeine haue goods either by his owne proper buying and selling, or otherwise by the gift of other men, hee hath as perfect a propertie, and also as whole interest in them, and may as lawfully give them away as any free man may. But if the Lord selle them before his gift, then they bee the Lords, and the interest of the villeine therein is determined.

Also if the Lord selle part of the goods of his Villeine in the name of all the goods that the Villeine hath or shall hereafter haue, that seisure is good, for all the goods that hee had at the time of the seisure. But if goods come to the Villeine after the seisure, he may lawfully give them away notwithstanding the sayde seisure.

Also if the Lord claime all the goods of the villeine, and selleth no part of them, that seisure is void, and the gift of the villeine is good notwithstanding that seisure.

Also if a man bee bound to a Villeine in an obligation in a certaine sum of money, and the Lord seisseth the obligation, then the obligation is his, but yet he can take no action thereupon but in the name of the villeine: and therefore if the villeine release the debt, the Lord is barred by that release.

Also if a woman bee niece, and shee marieth a free man, the goods immediately by the marriage be the husbands, and the Lord shall come too late to make any seisure: and if the husband in that case maketh his will, his Executors

and dyeth, and the wife taketh the same goods
against as executrix to her husband, yet it shall
not bee lawfull for the Lord to take them from
her, though she be a nefe as she was before the
marriage.

Also if goods be given to a man to the use of
a Willaine, and the Lord seisth those goods, the
shire after some men is good by the Statute
made in the 19. yere of R. 2. whereby it is en-
acted, & the Lord shall enter into lands where
of other persons be seised to the use of his Willaine:
and they say that the same Statute shall bee un-
derstood by equitie of goods in use, as well as of
Lands in use.

Also if a Willaine be made a priest, yet notwithstanding
thelesse the Lord may seise his goods and lands
as he might before: & untill the seisure he may
alien them and give them away as hee might
before he was priest. And in this case the Lord
may order him, so that he shall doe him such ser-
vice as belongeth to a Priest to doe, before any
other: but hee may not put him to no laboꝝ nor
other businesse, but that is honest and lawfull
for a Priest to do.

Also if a Willaine enter into Religion in his
yeare of pꝛoofe, he may dispose his goods as hee
might haue done before he tooke the habit vpon
him.

And in likewise the lord may seise his goods
as hee might haue done before, but if he after
make executors, and bee pꝛofessed, and the exe-
cutors take the goods to the pꝛofumance of
the will, then the Lord may not seise the goods
though the executors haue them to the pꝛofu-
mance.

The 44. Chapter.

manee of the will of him that is his vyllein, nor
in that case the Lord may not sette his body, ne
put him to no manner of labour, but must suffer
him to abide in his religion vnder the obedience
of his superiour as other religious persons doe,
that bee not bounden: And the Lord hath no
remedie in that case for losse of his bondman,
but onely to take an action of Treasons against
him that receiued him into Religion without
his licence, thereupon to recover damages,
as shall be assessed by iij. men: Many other chie-
fes there be concerning the gift of the goods of
a vylleine, wherof I shall speake no more at
this time, for this that I haue said sufficeth to
shew that the knowledge of the Kings law is
right expedient to the good order of conscience
concerning such goods.

If a Clerke bee promoted to the tytle of his
patrimony, and after sellerh his patrimony
and after fallerh to pouverie, whether
shall he haue his tytle there-
in or not.

Cap. 44.

In the said samme called Rosella, in the title
Clericus quarnus, the 24. article is asked, if
a Clerke be promoted to the tytle of his pa-
trimony, whether hee may alien it at his plea-
sure, & whether in that alienation the solemn-
ties needeth to be kept, that is to be kept in alle-
nations

nations of things of the church: and it is answered there, that it may not bee aliened no more than the goods of a Spiritual benefice, if it be accepted for a title, and expressly assigned vnto him, so that it shoud goe as into a thing of the church, except hee haue after another benefice whereof he may liue. But if it be secretly assigned to his Title, some agree it may bee aliened: and in this case by the Lawes of the Realme, it may be lawfully aliened whether it be secretly or openly assigned to the Title; for the Ordinarie ne yet the party himselfe after the old custome of the Realme, haue no authority to bind any inheritance by authoritie of the Spiritual law: and therefore the land after it is assigned and accepted to be his title, standeth in the selfe same case to bee bought, sold, charged, or put in execution, as it did before. And therefore it is somewhat to be marueyled that Ordinaries will aduise such Land for a title, to the intent that hee that is promoted shoud not fall into extreame povertie, or go openly a begging; without knowing how the comon law will serue therein: for of a more right all inheritances within this realme ought to be ordered by the kings laws, and inheritance cannot bee bound in this Realme but by fine, or some other matter of recozd, or by feoffment or such other, or at least by a bargain that chaugeth an vse. And ouer that to assigne a state for terme of life to him that hath a fee simple before, is void in the Lawes of England without it be by such a matter that it be by way of conclusion or estoppel, and in this case is no
such

The 44. Chapter.

Such matter of conclusion : and therefore all that
 is done in such case in assigning of the said ti-
 tle is void. Also there is no interest that a man
 hath in any manors, Landes or Tenements for
 term of life, for term of yeeres, or otherwise, but
 that he by the law of the realme may put away
 his right therein if he will. And then when this
 man alieneth his Land generally, it were a-
 gainst the law of the Realme that any interest
 of such a Title should remaine in him against
 his owne sale : & there is no diuersity, whether
 the assignment of the Title were open or se-
 cret, and so the Title is void to all intents.
 And in likewise if a house of Religion, or any
 other spiritmall man that hath granted a Title
 after the custome vsed in such titles, sell all the
 lands and goods that they haue, that sale in the
 lawes of England is good as against the title,
 and the buyer shall neuer be put to answer for
 the title. Also some say, that vpon the common
 titles that be made daily in such case, that if hee
 fall to poverty, that hath the title, he is without
 remedy : for they be so made that at the common
 Law there is no remedy for them, and if hee
 take a suit in the spiritmall court, many men
 say that a Prohibition or a Praemunire lyeth.
 And therefore it were good for Ordinaries in
 such case to counsell with them that bee lear-
 ned in the Law of the Realme to haue such a
 forme devised for making of such titles, that it
 need bee, should serue them that they bee made
 vnto, or else let them be promoted without any
 title, and so trust in God, that if they serue him
 as they ought to doe, he will provide for them
to

to haue sufficient for them to liue vpon. And besides these cases that I haue remembred before, there bee many other cases put to the sayd summe for the well ordering of conscience, that as me thinketh are not to bee observed in this Realme, neither in Law nor conscience.

Do. Dost thou then thinke that there was default in them that haue the said summes, and put therein such cases and such solutions that as thou thinkest hurt conscience, rather than to giue any light to it, specially as in this Realme? Se. I thinke no default in them, but I thinke that they were right well and charitably occupied, to take so great paine and laboz as they did therein, for the wealth of the people and clearing of their conscience: for they haue thereby giuen a right great light in conscience to all Countries where the law Civill and the Law Canon bee bled to temporall things. But as for the Lawes of this realme they knew them not, ne they were not bound to know them, and if they had knowne them, it would little haue holpen them for the countries that they most specially made their treatises for: And in this countrie also they be right necessarie and much profitable to all men: for such doubts as rise in conscience in diuers other maners not concerning the law of the realme. And I maruell greatly that none of them that in this Realme are most bounden to doe that in them is to keepe the people in a right iudgement, and in a cleerenesse of conscience, haue done no more in time passed to haue the Law of the Realme knowne than they haue done.

The 44. Chapter.

for though ignorance may sometimes excuse, yet the knowledge of the truth, and the true iudgement is much better, & sometime though ignorance excuseth in part, it excuseth not in all: and therefore me thinketh they did very well if they should yet bee callers on to haue that point reformed as shortly as they could. And now because thou hast well satisfied my mind in many of these questions that I haue made, I purpose for this time to make an end. Do. I pray thee yet shew me: that thou make an end moe of these cases, that after thine opinion bee set in diuers booke of learning of conscience, that as thou thinkest for lacke of knowledge of the Law of the Realme, doe rather blind conscience, than giue a light vnto it: for if it be so, then surely, as thou hast said it would be reformed, for I thinke verily the Lawes of the Realme in many cases must in this Realme bee obserued as well in conscience, as in the iudiciall Courts of the Realme. S. I will with good wil shew to thee shortly some other questions, that bee made in the said sum, to giue thee another occasion, to see therein the opinions of the said summes, and to see farther thereupon how the opinions and the Lawes of the Realme do agree together. And yet beside these questions that I intend to shew vnto thee, there bee many other questions of the sayd sum, that had as great need to bee moze plainly declared according to the Lawes of the Realme, as those that I shall shew thee hereafter, or as I haue spoken of before: but to the cases that I shall speake of hereafter I will shew thee nothing.

thing of my conceipt in them, but will leaue it to other that will of charitie take some further paine hereafter in that behalfe.

¶ Diuers questions taken out of the Student of the summes, called Summa Rosella, and Summa Angelica, which hee thinketh necessarie to be looked vpon, and to bee seene how they stand and agree with the law of the Realme.

Cap. 45

The first question is this, whether a Common may breake a law positive. Summa Rosella, titulo Consuetudo para. 13.

The second is, if a man attainted or banished be restored by the Prince, whether shall that restitution stretch to the goods; Summa Rosella in the title Damnatus in principio.

Item, if a man be outlawed of felonie, abjured, or attainted of myrther or felonie, or he that is an Alecismus may be slain by strangers: and see like matter thereto; Summa Angel. in the title Alecismus para. 11.

This question is somewhat answered to, in a new addition, as appeareth before in the 14. Chapter.

Item, whether the master shall bee bound by the act, or offence of his seruant, or officer, Summa

An.

The 45. Chapter.

Angel in the title Dominus para. 4.
This question is answered to in an addition, as appeareth befoze the 45. Chapter.

Item, whether a Melleine may giue away his goods. Summa Angelica, in the title Donatio prima, para. 9.

This question is answered to in an addition as appeareth befoze in the 43. Chap.

Item, whether an Abbot may giue &c. Summa Angelica in the title Donatio 1. para. 10. & 30.

Item, whether a woman conert may giue away any goods. And it is answered. Summa Angelica, in the title Donatio 1. Parag. 11. that shee may not, without shee haue goods beside her dowrie, but onely in almes.

Item, if a man do treason, whether his gift of goods after, befoze attainder, be good. Summa Angelica, in the title donatio 1. para. 12. & it lemeth there may, and looke Summa Angelica, in the title Alienatio, para. 24.

Item, if a man smitingly make a contract betweene two kinfolke, or other that may not lawfully marrie together, whether he hath forfeit his goods. Summa Ang. in the title donatio 1. para. 14.

Item, whether the father may giue to the son. Summa angel. in the title donatio prima, para. 19. and Summa Rosella, in the title donatio 1. para. 42.

Item, whether a man may giue aboue b. C. s. absque inquisitione. Summa ang. in the title donatio 1. para. 20.

Item, whether a gift shal be auoided by an

ingratitude, Summa Rosella, in the title Donatio 1. parag. 17. & 19. and there it is said, if the gift is void by the law of nature, & like Summa Angelica, in the title Donatio prima, Paragraph 42. & 43.

Item, where any gift be to the husband and the wife may be good, and it is said so, when the husband giveth it, Causa remunerationis, Summa Rosella, in the title Donatio 1. para. 32.

Item if a man make a will, & enter into religion, whether he may after reuoke the will, and it is said, that Priests & Monks may not, and other may. Summa Rosella, in the title donatio 1. para. 35. in fine.

Item, if a man giue another a town with all the rights that he hath in the same, whether the patronage &c. and the tithes passe. Summa Rosella, in the title Ecclesia 1. para. 36.

Item, whether all that is bought with the money of the Church be the churches. Summa Rosella in the title Ecclesia 1. para. 7.

Item, if a gift made to Monastery, may be voided by that the giver hath children after the gift. Summa Rosella, in the title Donatio 1. para. 43.

Item, if a man buy a thing under the halfe price, whether he be bound by the Law to re-
bore &c. Summa Rosella, in the title Emptio & venditio, para. 6.

Item, whether a common thels, vel comunio depolator agrorum may abture, Summa Rosella, in the title Emunitas 2. in principio. Reha-
betur

The 45. Chapter.

becuz ibi in fine, qđ licet leges excipiant pluries personas vna per ius canonicum legibus deſcriptum eſt.

Item, whether a man ſhall take the Church for great enormitious offences that is not murder, nor felonie. Summa Roſella in the title Emunitas 2. Paraſ. 3. & 4.

Item, if a man take one in the high way, and draw him out, & there beatech him, whether he ſhall haue þe puniſhmēt that is ordained for the ſlacke ſtrike one in the high way. Summa Roſella in the title Emunitas 2. Paraſ. 6.

Item, whether hee that taketh the Church may after the offence be iudged to death. Summa Roſella, in the title Emunitas 2. para. 8.

Item, whether the Biſhops pall is be ſacrament. Summa Roſella, in the title Emunitas para. 24.

Item, whether the dignitie of the biſhop, or Prieſthood discharge bondage. Summa Roſella in the title Episcopos, in principio.

Item, whether a clerk is bound to pay any Impoſitions, or Tallages, for his patrimonye or otherwiſe. Summa Roſella in the title Excommunicatione 1. diuiſione 1. para. 4. & 5. & 6. & diuiſione nona, para. 1.

Item, if it were ordained by ſtatute, that if a man ſell a beaſt he ſhall giue to the king ij. d. whether a clerk be bound to giue it if he ſell of his prebend. Summa Roſella, in the title Excommunicatione 1. diuiſione nona, para. 2.

Item, if it bee ordained by ſtatute that there ſhall not be layd vpon a dead perſon, but ſuch a certaine cloth, or thus many tapers, or candles.

deals, whether the statute be good, & it is left for a question. Summa Rosella, in the title Excommunicatio 1. diuisione 18. para. 3. in fine.

Item, if a man make a lease of a mill for terme of yerres, & it is agreed that the lessee shall grind the lessee's toyle free during the terme, after the lease is made an earle or a duke, & hath greater household than before, whether the lessee be bound there or. Summa Rosella, in the title Familia pa. 5.

Item, if a master will not pay his servants wages, that hath serued him faithfully, whether that seruant may take secretly as much goods of the masters or. & if he do, whether hee be bound to restitution. Summa Rosella, in the title Familia para. 6.

Item, things immouable of the church may not be given, Summa Rosella, in the title Feodum parag. 1. And see there in principio what Feodum is.

Item, whether the sons bastards, & the sons lawfully begotten shall inherite together, Summa Rosella, in the title Filius para. 1.

Item, whether father and mother may succeed to their bastards. Summa Rosella in the title Filius, para. 4.

Item, whether the father may leane any of his goods to his bastards, Summa Rosella in the title Filius, para. 5. And Summa Rosella, in the title Societas, para. 23.

Item, whether the offence of the father shall hurt the son in tempoꝛall things. Summa Rosella, in the title Filius.

Item, if a man give all his lands and goods to his childꝛe, whether a bastard shall haue any part

The 45. Chapter.

part, Summa Rosella, in the title filius para. 22.

Item, to whom treasure found belongeth, Summa Rosella, in the title furtum para. 11.

Item, if a deere, or other wild beast that is so sore hurt & he may be taken, cometh into another mans ground, whether it be his that oweth the ground, or his that stroke him, Summa Rosella, in the title furtum, para. 13.

Item, whether theft be in a little thing as well as in a great thing. Summa Rosella in the title furtum, para. 18.

Item, what pain a thief shall haue. Summa Rosella, in the title furtum, para. 22.

Item, that if goods of dead men goe to the heires, & that of damned men, s. De terris. Summa Rosella, in the title Hæreditas, para. 1.

Item, whether a man shall bee said guilty of murder by commandement, counsell, or assent, Summa Rosella, in the title Homicidiū 2. per totum, & like matter is Homicidiū 4 in principio, and in diuers other cases.

Item, a man maketh a private contract with a woman, & after hath a child by her, & after marrieth another woman, and hath a child, the not knowing the first contract, which of the children shalbe his heire. Summa Rosella, in the title Illegitimus para. 4.

Item, whether the Pope may legitimate one to rempozell things, & to succeed, Summa Rosella, in the title Illegitimus para.

Item, if goods be found that were left of the owner as forsaken, who hath right to them. Summa Rosella in the title lauenta para. 2. And also Summa Rosella in the title furtum, para. 17.

And

And thus I make an end of these questions: & because thou desirest me in the 31. Chapter, to shew thee somewhat, where ignorance excuseth in the Law of the realm, & where not, I will answer somewhat to thy question, and so commit thee to God.

¶ Where ignorance of the Law excuseth in the laws of England, and where not.

Cap. 46.

Ignorance in the law (though it be invincible) doth not excuse as to *the* law but in few cases: for everie man is bound at his perill to take knowledge what *the* law of the realm is, aswel *the* law made by statute as the common law, but ignorance of the deed, which may be called the ignorance of the truth of the deed, may excuse in many cases. D. I put case that a statute penall be made, & it is enacted that the statute shall bee proclaimed by such a day in everie shire, & it is not proclaimed before the day, & after the day a man offends against the statute, shall hee runne in the penaltie? I think yea, if there be no farther words in the statute to help him, that is to say, that if the proclamation bee not made, *the* no man shall be bound by the stat. & the cause is this: there is no statute made in this realme, but by the assent of the lords spiritual & temporal, and of all the commons, that is to say, by the knights of the shire, citizens, and burgessees that be chosen by assent of the commons, which in the parliament represent the estate of the whole commons:

The 46. Chapter.

And every statute there made, is of as strong effect in the Law, as if all the commons were there present personally at the making thereof: and like as there needed no proclamation, if all were there present in their owne person, so the law presumeth there needeth no proclamation, when it is made by their authoritie, & the when it is enacted, that it shall be proclaimed &c. that is but of the favours of the makers of the statute, & not of necessitie: and it cannot therefore be taken, that their intent was that it should be borne if it were not proclaimed. Nevertheless some be of opinion, that if a man before the day appointed for the proclamation offend the statute, that he should not in that case be punished, for they say, that the intent of the makers of the statute shall be taken to be, that none should be punished before the day, which is a doubt to some other: But admit it be as they say, that he shall be excused, yet hee is not excused by the ignorance of the Law, but because the intent of the makers excuseth him. D. It is enacted in the 7. yeare of R. 2. cap. 6. that everie Sheriffe shall proclaim the statute of Winchester three times every yeare, in every market towne, to the intent the offenders shall not be excused by ignorance, & it seemeth by those words, that if no Proclamation be made, that the offender may be excused by ignorance. *Siu.* Some take the intent of that statute to be, that the people by that Proclamation should have knowledge of the Statute of Winchester, to the intent, that the forfeiture therein may be taken as well in conscience as in law: and some take the statute to be of

of such effect as thou speakest of, that is to say, that no forfeiture should grow upon the Statute of Winchester against them & were ignorant, but proclamation were made according to the said Statute of Richard. And if it be so take, the Statute of Winchester is of small effect against most part of the people, for certain it is that the said proclamation is not made: but admit it bee as they say, then they that be ignorant bee excused by & said particuler estatute, specially made in that case, and not by the generall rules of the law: and sometime in diuers Statutes Penalls, they that bee ignorant bee excused by the selfe Statute, as it is upon the Statute of Richard the 2. the 13. yeare, the 2. Statute, and the last Chap. where it is enacted, that if any person take a benefice by promise that he shalbe banished the realme & forfeit all his goods, and that if he bee in the Realme, he auoid within 6. weekes after he hath accepted it, and that none shall receiue him & is so banished after the said 6. weekes upon like forfeiture if he haue knowledge: and so hee that hath no knowledge is excused by & expresse words of the Statute. And in likewise he that offendeth against Mag. Cha. is not excommunicated but hee haue knowledge that it is prohibited that hee doth. For they bee onely excommunicated by the sentence called *Sententia lata sup carcas*, that doe it willingly, or that doe it by ignorance, & correct not themselves within 15. dayes after they haue warning. And sometime they that be ignorant of a Statute bee excused from the penaltie of the Statute, because it shalbe taken that the intent of the makers of the Statute

The 46. Chapter.

tute was, that none should bee bound but they that haue knowledge : but that any man shalbe discharged in the law by ignorance of the law only for that he is ignorant, I know few cases except it might be applied to infants that be in their infancie, & within yeres of discretion: for if ignorance of the law should excuse in the law, many offenders would pretend ignorance. Do, Shall an infant that hath discretion, & knoweth good fro euill, be punished by a penall statute that he is ignorant in? If the statute be, that for the offence hee should haue corporall payne, I thinke he shall be excused and haue no corporall payne : but I suppose that that is not for the ignorance, for though hee knew the statute, & willingly offended, yet I thinke he shall haue no corporall paine : As where hee plead Joine tenancie by deed that is found against him, or if hee plead a Record in a Title, and saileth of it at his day : but that is because the law presameth that it was not the intent of the makers of the Statute, that he should haue that punishment : but if he be of yeres of discretion to know good from euill, whether hee shall then forfet the penaltie of a penall statute it is more doubt, for it is commonly holden, that if an infant had not bin excepted in the Stat. of foreiudgement, that the foreiudgement should haue bound him. & so shall his cesser, & his leuying of a crosse against the statute, or if he be a gardin of a prison and suffer a prisoner escape, he shall pay the debt because the statutes bee generall, & if he should by the statutes be bound within age, he reason wil shew may by a statute penall leese his goods. D.

If an Infant doe a murder or felonie at such
 peeres as he hath discretion to know the law,
 shall he not haue the punishment of the law as
 one of full age? I think yes, but that is by an
 old Maxim of the law for eschewing of mur-
 ders & felonies, & so it is of a trespass: but these
 cases run not vpon the ground of ignorance, but
 with what acts Infants shall be punishable or
 not punishable, for the tenderneſſe of their age,
 though they be not ignorant. Do. We not yet
 knights & noble men that are bound most pro-
 perly to set their studie to acts of chivalrie, for
 defence of the realme, & husbandmen that must
 be tillage & husbandrie for the sustenance of the
 commonwealth, & that may not by reason of their
 labour put them selues to know the Law, dis-
 charged by ignorance of the law? No verily,
 for such all were makers of the statute, the law
 presumeth that all haue knowledge of that that
 they make, as it is said before: and as they bee
 bound at their perill to take knowledge of the
 statute that they make, so be all them that come
 after the. And as for knights and other nobles
 of the Realme, we seemeth that they should bee
 bound to take knowledge of the law as well as
 any other within the realme, except them that
 giue themselves to the studie & exercise of the
 law, & except spirituall iudges, & in many cases
 bee bound to take knowledge of the law of the
 realme, as is said before in Cap. 25. For though
 they be bound to acts of Chivalrie, for the de-
 fence of the Realme, yet they bee bound also to
 the acts of Justice, & that (it seemeth) moze than
 other be by reason of their great possessions and

The 46. Chapter.

authoritie: and for the well ordering of the tenants servants, & neighbors, that many times have need of their helpe, & also because they be oft called to be of the Kings council, & to be generall counsels of the realm, where their counsell is right expedient & necessary for the common wealth: and therefore if the noblemen of this realme would see their children brought up in such maner, that they should have learning and knowledge, more than they have commonly used to have in time past, specially of the grounds & principles of the law of the realme wherein they be inherit (though they had not the high cunning of the whole body of the law, but after such maner as M. Fortescue in his booke that he entitlieth the Booke de laudibus legu Anglia, advertiseth the Prince to have knowledge of the lawes of this realme) I suppose it would be a great helpe hereafter to the ministration of Justice of this realme, a great luxury for himselfe, and a right great gladnesse to all the people: for certain it is, the more part of the people would more gladly heare of their rulers & governors intended to order them with wisdom and iustice, than with power & great retinues. But ignorance of the deepe many times excuseth in the Lawes of England, & I shall shortly touch some cases therof to shew where it shall excuse, and where it shall not excuse, & then the reader may adde to it after his pleasure, & as hee shall thinke to be convenient.

¶ Certaine cases and grounds where ignorance of the deed excuseth in the laws of England, and where not.

Cap. 47.

If a man buy a horse in open market of him that in right had no propertie to him, not knowing but that he hath right, he hath good title and right to the horse, and the ignorance shall excuse him. But if hee had bought him out of the open Market. or if hee had knowne that the seller had no right, the buying in open market had not excused him. Also if a man retaine another mans servant not knowing that he is retained with him, the ignorance excuseth him both of the offence that was at the common law against the Maxime that prohibited such retaining of another mans servant, and also against the Statute 33. Ed. 3. whereby it is prohibit vpon paine of imprisonment, that none shall retaine no seruaunt that departeth within his term, without licence or reasonable cause: for it hath bin alway taken, that the intent of the makers of the said Statute was, that they that were ignorant of the first retainer, should not run in any penaltie of the statute. And the same Law is of him that retaineth one that is ward to another, not knowing that he is his ward And if homage be due, and the Tenant after that the homage is due maketh a feoffement, and after the Lord not knowing of the feoffement distraineth for the homage, in that case that ignorance shall excuse him of his damages in a Replewin though he cannot arow for the homage: but if hee had knowne of the feoffement, hee should haue paid damages for the wrongfull taking. Also if a man be bound in an Obligation that he shall

repair

The 47. Chapter.

repaire the houses of him that hee is bound to
 by such a certain time, as olt as neede shall re-
 quire, & after the houses haue need to be repay-
 red, but hee that is bound knoweth it not, that
 ignorance shall not excuse him, for he hath bound
 himselfe to it, and so hee must take knowledge
 at his perill: But if the condition had bin that
 hee should repaire such houses as hee to whom
 hee was bound should assigne, & after hee assign-
 meth certaine houses to be repaired, but he that
 is bound hath no knowledge of that assignement,
 that ignorance shall excuse him in the law, for
 he hath not bound himselfe to no reparation in
 certaine, but to such as the party will assigne, &
 if he assigne none, he is bound to none: & there-
 fore sith hee that should make the assignement
 is partie to the deed, he is bound to give notice
 of his owne assignement: but if the assignement
 had bin appointed to a stranger, then the obli-
 gor must haue taken knowledge of the assigne-
 ment at his perill. Also if a man buy Lands
 whereunto another hath title which the buyer
 knoweth not, that ignorance excuseth him not
 in the law no more than it doth of goods. Also
 if a seruant come with his masters horse to a
 Towne that by custome may attach goods for
 debt, & vpon a plaint against the seruant, an of-
 ficer of the towne by information of the partie
 attacheth the Masters horse, thinking that it
 were the seruants horse, that ignorance excu-
 sech him not: for when a man will do an act as
 to enter into Land, seile goods, take a distresse,
 or such other, hee must by the law at his perill
 see that that hee doth bee lawfully done, as in
 the

the case before rehearsed. And in the case if a
 Sherife by a Replevin deliver other beasts,
 that were distrained, though the party that dy-
 strained shew him they were the same beasts,
 yet an action of trespass lyeth against him, and
 ignorance shall not excuse him: for he shall bee
 compelled by the law, as all officers commonly
 be, to execute the Kings writ at his perill, ac-
 cording to the tenor of it, and to see that the act
 that he doth be lawfully done. But otherwise
 it is after some men, if upon a Summons in a
 Praecipe quod reddat, the Sherife by infor-
 mation of the demandant, summoneth the tenant
 in another mans Lands, thinking it for the te-
 nants land, there they say he shalbe excused: for
 in that case he doth not seise the Land, ne take
 possession in the land, but only doth summon the
 tenant upon the land, & the writ commandeth
 him not that he shall summon the tenant upon
 his owne land, but generally that he shall sum-
 mon him, & knoweth not in what Land, & then
 by an old Maxime in the law it is taken, that
 he shall summon him upon the land in demand:
 and therefore though he mistake the land and be
 ignorant of it, yet if the Demandant informe
 him that that is the Land that he demandeth,
 that sufficeth to the Sherife as to his entry for
 the summoning as they say, though it bee not
 the tenants. And here I make an end of these
 questions for this time. Do. I pray thee yet of
 we depart take a little more paine in my desire.
 What is that? D. That thou wouldest shew
 me thy mind in diuers cases of the Law of the
 realm, which (as me seemeth) had not so clearly
 with

The 48. Chapter.

With conscience as they should doe. And therefore I would gladly heare thy conceit therein, how they may stand with conscience. S. But the cases, & I shall with good will say as I thinke to them.

¶ The first question of the Doctor, how the law of England may be said reasonable, that prohibeth them that be arraigned vpon an Indictment of felony or murder, to haue counsell.

Cap. 48.

Mee thinketh that the law in that point is verie good and indifferent, taking the law therein as it is. D. Why, what is the law in this point? S. The law is as thou saist, that hee shall haue no counsell: but then the Law is farther, that in all things that pertaine to the order of pleading, the Judges shall so instruct him and order him, that he shall runne into no leoperdie by his mispleading: As if he wil plede that he neuer knew the man that was slaine, or that he had neuer a peny worth of goods that is supposed that he should steale, in these cases the Judges are bound in conscience to informe him that hee must take the generall issue, and plead that hee is not guiltie: for though they be set to be indifferent betweene the King and the party as to the party and to the principall matter, as they bee in all other matters, yet they bee in this case to see that the partie take no hurt in forme of pleading in such matters.

ters, as he shal shew to be the truth of the matter, and that is a great fauour of the law: for in appeale, though the Iustices of sauior will most commonly helpe forth the partie, and sometime his Counsell also in the forme of pleading, as they do also many times in common plects, yet they might in those cases if they would bid the partie, and his Counsell pleade at their perill. But they may not doe so with conscience vpon inditments as me seemeth: for it were a great unreasonable in the Law, if it should prohibit him that standeth in teoperdie of his life, that he should haue no counsell, and then to bzing him to pleade after the strait rules, and formalities of the law that he knoweth not. Do. But what if hee be knowne for a common offendor, or that the Iudges knowe by examination, or by an euident presumption that hee is guilty, & hee asketh Sanctuarie, or pleadeth misnolmer, or hath some Recoꝝd to pleade, that hee cannot pleade after the forme, May not the Iudges in such cases bid him plead at his perill? St. I suppose they may not, for though hee be a common offendor, or that he be guilty, yet hee ought to haue that the Law giueth him, and that hee shal haue the effect of his plects, and of his matters entred after the forme of the Law: and also sometime a man by examination, and by witnessse may appeare guiltie that is not: and in likewise there may bee a vehement suspicion that he is guiltie, and yet hee is not guiltie, and therefore for such suspicion, or vehement presumptions we thinketh a mā may not with conscience bee rat from that hee ought to haue

The 48. Chapter.

By the law, we yet although the Judges knowe
of their owne knowledge: but if it were in ap-
peale, I suppose that the Judges might doe
therein as they should thinke best to bee done in
conscience: for there is no Law that bindeth
them to instruct him (but as they doe common-
ly to the parties of fauor in all other cases) but
they may if they will bid them plead at their pe-
tition by aduise of their counsell: and if the appel-
ler be poore, and haue no counsell, the court must
assigne him counsell if hee aske it, as they must
doe in all other places, & that mee thinketh they
are bound to doe in conscience, though the ap-
pellee were neuer so great an offender, & though
the Judges knowe neuer so certainly that hee
were guiltie, for the law bindeth them to doe it.
And so mee thinketh that there is great diuer-
sitie betwene an indictment & an appeale. And
the reason why the Law prohibiteth not coun-
sell in appeale as it both in an indictment, I
suppose is this: There is no appeale brought,
but that of common presumption the appellants
haue great malice against the appellee: as
when the appeale is brought by the wife of
the death of her husband, or by the sonne of the
death of his father: or that an appeale of rob-
berie is brought for stealing of goods. And
therefore if the Judges should in those cases
bid the parties to instruct the appellers, the ap-
pellants would grutch & thinke them partiall,
and therefore as well for the indemnitie of the
court, as of the appellee in case that hee bee not
guiltie, the Law suffereth the appellee to haue
counsell: but when that a man is indicted at the
Kings

Kings suit, the King intendeth nothing but iustice with fauor, & that is to the rest and quietnes of his faithfull subiects, & to pul away misdoers among them charitably: and therefore he will be contented that his Iustices shall helpe saue the offenders according to the truthe, as far as reason and iustice may suffer. And as the King said he contented thereto, it is to presume that the Councel will be contented, and so there is no danger thereby, neither to the Court ne to the parties. And as I suppose for this reason it began that they should haue no counsell upon indiments, & that hath so long continued that it is now growne into a custome, & into a maxime of the law, & they shall none haue Do. But if the Judges knew of their owne knowledge that the indicted is guiltie, and then he pleaderth *Misnomer*, or a Record that hee was auerfours arraigned, and acquit of the same murder, or felonie, and the Judges of their owne knowledge know that the plea is untrue, may they not then bid him plead at his perill & S. I think yes, but if they know of their owne knowledge that he were guilty of the murder or felonie, but that the plea was untrue they knew not, but by coniecture or information, I thinke they might not then bid him plead at his perill.

The second question of the Doctor, whether warrantie of the younger brother, that is taken a beire, because it is not knowne but that the eldest brother is dead, be in conscience a bar vnto the eldest brother,
as it is in the law.

Cap.

The 49. Chapter.

Cap. 49.

A Man seised of lands in fee hath issue two
 sons, the eldest son goeth beyond the sea,
 and because a common voice is that he is
 dead, the yonger brother is taken for heire, the
 father dyeth, & yonger brother entreteth as heire,
 and alieneth the land with a warrantie, & dieth
 without any heire of his bodie, and after the el-
 der brother cometh againe, and claimeth the
 land as heire to his father, whether shall he be
 barred by that warrantie in conscience as hee is
 in the law? &c. It is a Maxim in the Law,
 that the eldest brother shall in that case be bar-
 red, and that Maxim is taken to bee of as
 strong effect in the Law, as if it were ordained
 by statute to bee a barre. And it is as old a law
 that such a warrantie shall bar the heire, as it
 is that the inheritance of the father shall onely
 descend to the eldest son. And such the Law is
 is, why then should not conscience follow the
 Law, as well as it doth in that point, that
 the eldest son shall haue the land. No. for there
 appeareth no reasonable cause whereupon the
 Maxim might haue a lawfull beginning.
 For what reason is it that the warrantie of
 an ancestor that hath no right to land, should
 bar him that hath right? And if it were ordai-
 ned by Statute, that one man should haue
 another mans land, and no cause is expressed
 why he should haue it, in that case though hee
 might hold the land by force of that statute, yet
 he could not hold it in conscience, without there
 were

were a cause why hee should haue it, & these cases bee not like as mee seemeth to the forfeiture of goods by an Outlawrie, for I will agree for this time, that that forfeiture standeth with conscience because it is ordained for ministration of iustice, but I cannot perceiue any such cause here: and therefore me thinketh that this case is like to the *Maritime*, that was at the common Law of wrecke of the Sea, that is to say, that if a mans goods had bin wrecked vpon the sea, that the goods should haue bin immediately forfeited to the King. And it is holden by all Doctors that the Law is against conscience, except in certain cases that were too long to rehearse now. And it was ordained by the Statute of Westminster the 1. that if a Dogge or Cat come alicie to the land, that the owner, if hee p'proue the goods within a yere and a day to be his, shall haue them, whereby the said Law of wrecks of the sea, is made more sufferable than it was before: and some thinke in this case that this warrantie is no bar in conscience, though it be a barre in the law. S. I pray thee keep that case of wrecke of the sea in thy remembrance, and put it hereafter as one of thy questions, & thereupon shew mee thy further minde therein, and I shall with good will shew thee my mind: and as to this case that we be in now, me thinketh the *Maritime* wherby the warrantie shalbe a barre, is good and reasonable, for it seemeth not against reason that a man shal be bound, as to temporall things, by the act of his auncestors to whom hee is heire: for like as by the law it is ordained, that hee shall haue advantage by the

The 49. Chapter.

the same ancestor, and haue all his landes by
 discent if hee haue any right, so it seemeth that
 it is not vnreasonable, though the Law for the
 priuile of blood that is betwene them suffer
 him to haue a disadvantage by the same an-
 cestour: but if the Maxim were, that if any of
 his ancestours, though hee were not heire to
 him, made such a warrantie, that it should bee a
 bar, I thinke that Maxim were against con-
 science, for in that case there were no ground,
 nor consideration to proue how the said Ma-
 xime should haue a lawfull beginning, wherfore
 it were to bee taken as a Maxim against the
 law of reason: but me thinketh it is otherwise
 in this case, for the reason that I haue made
 before. D. If the father bind him and his heires
 to the payment of a debt and dye, in that case
 the sonne shall not bee bound to pay the debt,
 vnles he haue assets by discent from his father.
 And so I would agree, that if this man haue
 assets by discent from the ancestor that made
 the warrantie, that he should haue bin barred:
 but els me thinketh it should stand hardly with
 conscience that it should be a barre. Stu. In that
 case of the obligation, the Law is as thou saist,
 and the cause is, for that the Maxim of the
 law in that case is none other, but that hee shall
 bee charged if hee haue assets by discent: but if
 the Maxim had bene generall, that the heire
 should bee bound in that case without any al-
 sets, or if it were ordained by Statute, that it
 should bee so, I thinke that both the Maxim
 and the statute should well stand with consci-
 ence. And like law is where a man is vouched
 as

as heire, he may enter as hee that hath nothing by discent, but where hee claimeth the land in his owne right, there the warrantie of his ancestor shall be a bar to him, though hee haue no assets from the same ancestor, & though it bee said in Ezechiel Ca. 18. That the sonne shall not beare the wickednesse of the father, that is vnderstood spiritually. But as to temporall goods the opinion of Doctors is, that the sonne sometime may beare the offence of his father Do. Now that I haue heard thy mind in this case, I will take aduise ment therein till a better leasure, and will now proceed to another question. tu. I pray thee doe as thou saist, and I shall with god will make answere therto as well as I can.

¶ The 3 question of the Doctor; If a man procure a collaterall warrantie, to extinct a right that hee knoweth another man hath to land, whether it bee a barre in conscience as it is in the Law, or not.

Cap. 50.

A Man is disseised of certaine land, & disseisedor selleth the land &c. Aliene knowing of the disseisin, obtaineth a relase with a warrantie of an ancestor collaterall to the disseisedor that knoweth also the right of the disseisedor, that ancestor collaterall dyeth, after whose death the warrantie descendeth vpon the disseisedor, whether may the aliene in the case hold the land

The 50. Chapter.

in conscience as he may by the law. S. With the warrantie is descended vpon him, wherby he is barred in the law mee thinketh that hee shall also be barred in conscience, and that this case is like to the case in the next Cha. before wherin I haue said that (as me thinketh) it is a bar in conscience D. Though it might be taken for a bar in conscience in that case, yet mee thinketh in this case it cannot: for in that case the younger brother entred as heire, knowing none other but that hee was heire of right, an after when he sold the land, the buyer knew not but that hee that sold it had good right to sell it, and so he was ignozant of the title of the eldest brother, & that ignozance came by the default and absence of himselfe, that was the eldest brother. But in this case aswell the buyer, as he that made the collaterall warranty, knew the right of the disseiser, and did that they could to exting the right, and so they did as they would not should haue been done to them: & so it seemeth hee that hath the land may not with conscience keepe it. S. Though it be as thou saiest that all they offended in obtaining of the sayd collaterall warranty, yet such offence is not to be considered in the law, but it bee in verie speciall cases: for if such alleagings should be accepted in the law, releases, and other writings should be of small effect, and vpon euerie light surmise, all writings might come in triall, whether they were made with conscience or not. Therefore to auoid that inconuenience, the law will oblige the partie to answer, onely whether it bee his deede or not, and not whether the deede were made

made with conscience or against conscience, and though the party may be at a mischief thereby, yet the law will rather suffer the mischief than the said inconvenience. And like law is if a woman Couert for dread of her husband by compulsion of him lends a Fine, yet the woman after her husbands death, shall not be admitted to shew that matter in avoiding of the Fine, for the inconvenience that might follow thereupon. And after the opinion of many men, there is no remedie in these cases in the Chancery: for they say that where the common law in cases concerning inheritance putteth the partie from any averment for eschewing of an inconvenience that might follow of it among the people, that if the same inconvenience should follow in the Chancery if the same matter should be pleaded there, that no Subpena should lie in such cases, so it is in the cases before rehearsed: for so much vexation, delay, costs and expences might grow to the party if hee should be put to answer to such averments in the Chancery, as if he were put to answer to them at the common law: and therefore they thinke that no Subpena lyeth in the said cases ne in other like unto the. Nevertheless I do not take it that their opinion is that hee that bought the land in this case may with good conscience hold the Land, because he shall not be compelled by no law to restore it, but that he is in conscience and by the law of reason bound to restore it or otherwise to recompence the party, so as hee shall be contented, and I suppose verily it is that he will keepe his soule out of perill and

The 51. Chapter.

danger. And after some men to these cases may
bee resembled the case of a fine with nonclaime
that is remembred before in the 14. Chap of this
booke, where a man knowing another to haue
right to certayne land, causeth a fine to be leued
therof with Proclamation, & the other suffereth
by yeres to passe without claime, in that case hee
hath no remedie neither by common Law, nor
by Subpena, & that yet he that leued the fine, is
bound to restore the land in conscience. And we
thinketh I could right well agree that it should
be so in this case, and that specially because the
party himselfe knoweth perfectly that the sayd
collateral warrantie was obtained by contrarie
against conscience.

¶ The fourth question of the Doctor is of
the wrecke of the Sea.

Cap. 51.

I pray thee let mee now heare thy mind how
the Law of England concerning goods that
be wrecked upon the sea may stand with con-
science, for I am in great doubt of it. S. I pray
thee let me first heare thine opinion what thou
thinkest therein. D. The Statute of West. the 1.
that speaketh of wreckes is, that if any man,
dog or cat, come ashore into the land out of the
Ship or Barge, that it shall not be iudged for
wrecke, so that if the party to whom the goods
belong come within a yere and a day and proue
them to be his, that he shall haue the or else that
they shall remaine to the king And we thinketh
that

that the said Statute standeth not with conscience, for there is no lawfull cause why the party ought to forfeit his goods, ne þ the King or Lords ought to haue them, for there is no cause of forfeiture in the partie, but rather a cause of sorow & heaviness: And so the law seemeth to add sorow vpon sorow: And therefore doctours hold commonly, that he that hath such goods is bound to restitution, and that no custome may help, for they say it is against the comādemēt of God, Leu. 19. where it is commanded, that a man should loue his neighbour as himselfe, and that they say he doth not, that taketh away his neighbours goods: but they agree that if any man haue cost and laboz for the saving of such goods wrecked, specially for such goodes as would perish if they lay still in the water, as Sugar, Paper, Salt, Meale, and such other, that hee ought to be allowed for his costs & labour, but he must restore the goods, except hee could not save them without putting his life in ieopardie for them, and then if he put his life in such ieopardie, & the owner by comon presumption had had no way to haue saved them, then it is most commonly holden, that hee may keepe the goods in conscience: but of other goods that would not so lightly perish, but that the owner might of common presumption save them himselfe, or that might be saved without any perill of life, the takers of them be bound to restitution to the owner, whether he come within the yeare or after the yeare.

And me thinketh this case is somewhat like to a case that I shall put: if there were a Law

The 51. Chapter.

And a custome in this realm, or if it were orde-
 ned by statute, that if any alien came through
 the realme in pilgrimage, and dyed, that all his
 goods should be forfeit, that Law should bee a
 gainst conscience, for there is no cause reaso-
 nable why the said goods should bee forfeit:
 And no more mee thinketh there is of wrecke.
 S. There be diuers cases where a man shall lose
 his goods & no default in him: as where beasts
 stray away from a man and they bee taken by
 and proclauned, and the owner hath not heard
 of them within the yeare and the day, though
 hee made sufficient diligence to haue heard of
 them, yet the goods bee forfeited and no default
 in him: & so it is where a man killeth another
 with the sword of I at Stile, the sword shall
 be forfeit as a Deodand, & yet no default is in
 the owner: and so me thinketh it may be in this
 case, and that with the common law, before the
 said statute, was, that the goods wrecked vpon
 the sea, shall be forfeit to the king, that they bee
 also forfeit now after the Statute, except they
 be saued by following the statute, for the Law
 must needs reduce the proprietie of all goods to
 some man, and when the goods bee wrecked, it
 seemeth the proprietie is in no man: but admit
 that the proprietie remaine still in the owner,
 then if the owner percase would neuer claime,
 then it should not bee knowne who ought to
 take them: and so might they be destr oyed, and
 no profit come of them: wherefore me thinketh
 it reasonable, that the Law shall appoint who
 ought to haue them, and that hath the Law ap-
 pointed to the king as Soueraigne and head
over

ouer the people. Do. In the cases that thou hast put before of the Stray and Deodand, there bee considerations why they be forfeit, but it is not so here: and mee thinketh that in this case, it were not unreasonable that the Law should suffer any man that would take them, to take and keepe them to the vse of the owner, sauing his reasonable expences, and this mee thinketh were moze reasonable Law, than to pull þe proprietie out of the owner without cause. What if a man in the sea cast his goods out of the ship, as forlake, there Doctors hold that enery man may take them lawfully that will: But otherwise it is (as they say) if he throw them out for feare that they should overcharge the ship.

S. There is no such Law in this Realme of goods forlaken: for though a man wette the possession of his goods, and saith he forlaketh them, yet by the Law of the Realme the proprietie remaineth still in him, and hee may seise them after when he wil: And if any man in the meane time put the goods in safegard to the vse of the owner, I thinke hee doth lawfully and that he shall bee allowed for his reasonable expences in that behalte, as he shal be of goods found, but hee shall haue no proprietie in them, no moze than in goods found. And I would agree, that if a man prescribe, that if he find any goods within his manor, that hee should haue them as his owne, that that prescription were hoide: for there is no consideration how the prescription might haue a lawfull beginning, but in this case mee thinketh there is. D. What is that? S. It is this, The King of the old countie

The 52. Chapter.

Some of the realme, as the Lord of the narrow sea is bound as it is said to scower the Sea of the Pirats & petit robbers of the sea. And so it is read of the noble King Saint Edgar, that he would twice in the yere scower the sea of such pirats: but I meane not thereby that the king is bound to conduct his Merchants vpon the sea against all outward enemies, but that he is bound onely to put away such Pirats and petit robbers. And because that cannot be done without great charge, it is not unreasonable if he haue such goods as he wreacked vpon the sea toward the charge. Vpon that reason I will take a respite till another time.

¶ The fift question of the Doctor, whether it stand with conscience to prohibit a lury of meat and drinke till they be agreed.

Cap. 52.

If one of the xij. men of an enquest know the beery truth of his owne knowledge, and instructeth his fellows therof, & they wil in no wise giue credence to him, & thereupon because meat & drinke is prohibited them, hee is driuen to that point, that either he must assent to them and giue their verdict against his owne knowledge, and against his owne conscience, or dye for lacke of meat: how may the law then stand with conscience that will drine an innocent to that extremity, or be either forsworne, or to bee famished & die for want of meat. St. I take not the law of the realme to be, that the Iurie after they

they be sworn may not eat nor drinke till they be agreed of the verdict: but truth it is there is a Maxime, and an old custome in the law, that they shall not eat nor drinke after they be sworn till they have given their verdict without the assent & licence of the Justices: & that is ordained by the law for eschewing of divers inconueniencies that might follow thereupon, and that specially if they should eat or drinke at the costs of the parties, and therefore if they doe contrarie, it may be laid in an arrest of the iudgement: But with the assent of the Justices they may both eat and drinke; As if any of the Jurors fall sicke before they be agreed of their verdict so soze that hee may not commune of the verdict, then by the assent of the Justices he may haue meat & drinke, and also such other things as be necessary for him and his fellows also at their owne costes, or at the indifferent costes of the parties if they so agree, or by the assent of the Justices, may both eat and drinke: and therefore if the case happen that thou now speakest of, and that the Iurie can in no wise agree in their verdict, and that appeareth to the Justices by examination, the Justices may in that case suffer them to haue both meat and drinke for a time to see whether they will agree, and if they will in no wise agree, I thinke that the Justices may take such order in the matter, as shall seeme to them by their discretion to stand with reason and conscience, by awarding of a new Enquest, & by setting fine vpon them that they shall find in default, or otherwise as they shall thinke best by their discretion, like

The 53. Chapter.

as they may doe if one of the Jurle dye before herdit, if any other like casualties fall in that behalfe. But what the Iustices ought to doe in this case that thou hast put in their discretion, I will not treat of at this time.

¶ The 6. question of the Doctor, whether the colors that be given at the common Law in Assises, actions of trespassse, & diuers other actions, stand with conscience, because they be most commonly feined, and be not true.

Cap. 53.

I pray thee let me heare thy mind to what intent such colors bee given, and sith they bee commonly vnttrue, how they may stand with conscience? S. The cause why such colors bee given is this: there is a Maxime and a groūd of the Law of England, that if the defendant oz tenant in any action plead a plee that amounteth to the generall issue, that he shalbe compelled to the generall issue, and if he will not, hee shalbe condemned for lacke of answer, and the generall issue in Assise is, that he that is named the disseisor hath done no wrong, nor no disseisin. And in a writ of Entrie in the nature of Assise the generall issue is, that hee disseised him not. And in an action of Trespassse that he is not guilty, & so every action hath his generall issue assigned by the Law, and the Tenant must of necessitie either take the generall issue, oz plead some plee in abatement of the writ, to the jurisdiction, to the partie, oz else some barre oz some matter by way of conclusion. And therefore it

That **H.** infesse **H.** Part of land, and a stranger bringeth an assise against the said **H.** Part, for the land, whose title he knoweth not: In this case if he should be compelled to plead to the point of the assise, that is to say, that he hath done no wrong ne no disseisin, the matter should be put in the mouths of 12. lay men, which be not learned in the law, and therefore better it is that the law be so ordered, that it be put in the determination of the Judges, than of lay men. And if the said **H.** Part in the case before rehearsed, would plead in barre of the assise that **No** ac **Stille** was seiled, and enfeofed him, by force whereof he entred and asked iudgement, if that **A**ssise should lye against him, that plea were not good, for it amounteth but to the generall issue: and therefore he shalbe compelled to take the generall issue, or els the **A**ssise shall be awarded against him for lack of answer. And therefore to the intent the matter may be shewed and pleaded before the Judges, rather than before the **Jurie**, the tenants be to give the plaintife a colour, that is to say, a colour of action whereby it shall appeare that it were hard fail to the tenant to put that matter that he plebeth to the iudgement of 12. men: & the most common colour that is used in such case is this, when he hath pleaded that such a man enfeofed him, as before appeareth, it is used that he shal plead farther, & say that the plaintife claiming by a colour of a deed of feoffement made by the said feoffor, before the feoffement made to him where no right passed by the deed, entred, upon whom he entred and asked iudgement if
the

The 53. Chapter.

the Bill be against him. In this case because it appeareth to bee a doubt to vnlearned men, whether the land passe by the deed without issue or not, therefore the law suffereth the tenant to haue that speciall matter to bring the matter to the determination of the Judges. And in such case the Judges may not put the tenant from the plee, for they know not as Judges, but that it is true, & so if any default be it is in the tenant and not in the Court. And though the trueth bee, that there were no such deed of feoffment made to the plaintife as the tenant pleadeth, yet we thinketh there is no default in the tenant, for hee both it to a good intent as before appeareth. ¶ If the tenant know that the feoffor made no such deed of feoffment to the plaintife, then there is a default in the tenant to plead it: for hee wittingly sayeth against the truth, and it is holden by all doctours that enerie ly is an offence more or lesse, for if it be of malice, and to the hurt of his neighbour, then it is called *Mendacium perniciosum*, and that is deadly sinne: and if it bee in sport, and to the hurt of no man, nor of custome bled, ne of pleasure that hee hath in lying, then it is veniall sin, and it is called in latin, *mendacium iocosum*: and if it be to the profit of his neighbour and to the hurt of no man, then it is also veniall sin, and it is called in latin, *mendacium officiosum*: and though it bee the least of those threes, yet it is a veniall sin and would bee eschewed. ¶ **Ser.** Though the midwives of Aegypt Iyed when they had reserved the male children of the Hebrewes, saying to the king Pharaos, that

the

the Hebrewes had women that were cunning in the same craft, which of they came had reserved the children alive, where in deed they themselves of pitie and of dread of God reserved them, yet Saint Hierome expounded the text following, which saith, that our Lord therefore gave them houses, that is to bee understood, that hee gave them spirituall houses, and that they had therefore eternall reward: and if they sinned by that lye, although it were but veniall, yet I cannot see how they should have therefore eternall reward. And also if a man intending to slay another, aske mee where that man is, is it not better for me to lye, and say, I cannot tell where hee is, though I know it, than to shew where hee is, whereupon murder should follow? Doct. The desede that the Midwives of Egypt did in saving the children, was meritorious, and deserved reward everlasting (if they believed in God) & did good deedes beside, as it is to suppose they did, when they for the love of God, refused the death of the Innocents: and then though they made a lye after, which was but veniall sinne, that could not take from them their reward, for a veniall sinne doth not utterly extinct charitie, but letteth the fervour thereof: and therefore it may well stand with the wordes of Saint Hierome, that they had for their good deed eternall houses, and yet the lye that they made to be a veniall sinne: but neverthelesse, if such a lye that is of it selfe but veniall, bee affirmed with an oth, it is alway mortal, if he knowe it be false that he speaketh. And as to the other
que:

The 53. Chapter.

question, it is not like to this question that wee
have in hand as me seemeth: for sometime a man
for eschewing of the greater euill may doe a
lesse euill, and the lesse is no offence in him,
and so it is in the case that thou hast put, where
in becauſe it is lesse offence to say, hee swotteth
not where he is, though he know where he is,
than it is to shew where hee is, wherenpon
murther should follow, it is therefore no sinne
to say hee swotteth not where hee is: for euery
man is bound to loue his neighbour, and if hee
shew in this case where hee is, knowing his
death should follow thereupon, it seemeth that
hee loued him not, ne that hee did not to him as
he should be done to: But in the case that wee
be in here, there is no such sinne eschewed: for
though the party pleadeth the generall issue,
the Iurie might find the truth in euery thing,
and therefore in that he saith that the plaintife
claiming in by the colour of a deed of feoffment,
were nought passed, entred &c. knowing that
there was no such feoffment, it was a lye in
him and a veniall sinne, as mee thinketh. And
euery man is bound to suffer a deadly sinne
in his neighbour, rather than a veniall sinne in
himselfe.

¶ Though the Iury vpon a general issue, may
find the truth as thou sayst, yet it is much
more dangerous to the Iury to inquire of many
points, than to inquire only of one point. And
forasmuch as our Lord hath giue a commande-
ment to euery man vpon his neighbour: there-
fore euery man is bound to force as much as in
him is, by him no occasion of offence come to
his

his neighbor. And for the same cause, the law hath ordained diuers maxims & principles, whereby issues in the kings court may be ioined vpon one point in certain as nigh as may be, and not generally, least offence might folloiw thereupon against God, & a hurt also vnto the King, wherefore it seemeth that he loueth not his neighbor as himselfe, ne that he doth not as he would be done to, that offereth such danger to his neighbor, where he may wel and conveniently keep it from him, if he will folloiw the order of the law, & it seemeth that he putteth himselfe wilfully in iopardie that doth it, and it is written Eccle. 3.

Qui amat periculum, in illo perebit, that is to say, he that loueth perill, shall perish in it, & he that putteth his neighbor in perill to offend, putteth himselfe in the same, and so should hee doe mee seemeth that would wilfully take the generall issue, where hee might conveniently haue the speciall matter: and furthermoze it is no offence in princes and rulers to suffer contracts, and buying and selling in Markets and Faires, though both perurie and deceit will folloiw thereupon, because such contracts be necessarie for the common wealth: so it seemeth likewise, that there is no default in the party that pleadeth such a speciall matter to auoyde from his neighbour the danger of perurie, ne yet in the court though they induce him to it, as they doe somtyme for the intent before rehearsed. And in likewise some will say, that if rulers of cities & communalities, somtyme for the punishment of felons, murderers, & such other offenders will to the intent they would haue them to con-

The 54. Chapter.

esse the truth) say to them that be suspected that they be informed of such certaine defaults, or misdemeanors in the offenders, & that they doe to the intent to haue them to confesse the truth, that though they were not so informed, that yet it is no offence to say they were so informed, because they do it for the cōmon welth: for if offenders were suffered to goe unpunished, the common wealth would estones decay & utterly perish.

D. I will take aduise ment vpon thy reason in this matter till another season, and I will now aske thee another question somewhat like vnto this, I pray thee let me heare thy mind therein. Sr. Let me heare thy question, and I shall with good will say as I thinke therein.

¶ The 7. question of the Doctor concerning the pleading in Assise, whereby the tenants vse sometime to plead in such maner that they shal confesse no Ouster.

Cap. 54.

It is commonly vsed as I haue heard say that when the tenant in Assise pleadeth that a stranger was selsed and enfeofed him, and giueth the plaintife a colour in such maner as befoze appeareth in the xlvij. Chapter, that the tenant many times when hee hath pleaded thus, and the plaintife claiming by a colour of a deed of feoffement made by the said stranger, where nought passed by the deede, entreth, and

and that then they shal say further vpon
whom A. B. entred, vpon whom the tenant
entred, where in deed the said A. B. neuer en-
tred, ne happily there was neuer no such man:
How can this pleading be excused of an vntruth
and what reasonable cause can bee why such a
pleading should bee suffered against the trier?
Sr. The cause why that manner of pleading is
suffered, is this: If the tenant by his pleading
confessed an immediate entrie vpon the plain-
tife, or an immediate putting out of the plain-
tife, which in French is called an ouster, the if
the title were after found for the plaintife, the
tenant by his confession were attainted of the
disseisin. And because it may bee, that though
the plaintife haue good title to the Land, shal
yet the tenant is no disseisor: Therefore the te-
nant shal many times to plead in such manner as
thou hast said before, to save themselves from
confessing of an Ouster, & so if there be any de-
fault, it is not in the Court, ne in the Law, for
they know not the truth therein till it be tried:
and mee thinketh also that there is in this case
right little default or none in the tenant nor in
his counsell, specially if the counsell know that
the tenant is no disseisor. But as to that point
I pray thee that thou as thou hast taken a re-
spit to bee aduised, or that thou shew thy full
mind in the question of a coloz given in Wille,
whereof mention is made in the said 48. Chap-
ter: that I likewise may haue a like respit in
this case till another time, to bee aduised, and
then I shall with good will shew thee my full
mind therein.

The 54. Chapter.

D. I am content it be as thou saist, but I pray thee that I may yet adde another question to the questions before rehearsed of the colours in assise, & feele thy mind therein; because that soundeth much to the same effect that the other doe (that is to say) to proue that there bee diuers things suffered in the law to be pleaded & bee against the trueth; and I pray thee let me hereafter know thy mind in all these questions, & thou shalt then with a good will know mine. **S.** I pray thee shew me the case that thou speakest of. **D.** If a man steale a horse secretly in the night, it is bled that thereupon he shalbe indicted at the kings suit, and it is bled that in that indictment it shall be imposed that he such a day, and place with force and armes (that is to say) with flanes, swords, and knives, &c. feloniously stole the horse against the kings peace, & that forme must be kept in every indictment, though the felon had neither sword nor other weapon with him, but that hee came secretly without weapon. How can it therefore bee excused, but that therein is an vnt ruth. It is not alleadged in the indictment by matter in deed that he had such weapon, for the forme of an indictment is this.

Inquiratur p dno Rege, si A. tali die & Anno apud tale locum vi & armis, videlicet gladij, &c. ralem equum talis hominis cepit &c.

And then if the twelue men be only charged with the effect of the bill; that is to say, whether haue guiltie of the felonie or not, and not whether hee be guiltie vnder such maner and forme as the bill specifieth or not: and so when they

they say *billa vera*, they say true as they take the effect of the bill to be: And therefore if there were false latin in the bill of indictment, & the *Jurie* saith *billa vera*, yet their verdict is true: for their verdict stretcheth not to the truth or falshood of the latin, but to the felonie, ne to the forme of the words, but to the effect of the matter, & that is to inquire whether there were any such felony done by the person or not: and though the bill varie from the day, from the year, and also from the place where the felony was done in, so it vary not from the shire that the felony was done in, and the iury saith *billa vera*, they haue giue a true verdict, for they are bound by their oath to giue their verdict according to the effect of the bill, & not according to the forme of the bill. And so is he that maketh a bow bound likewise to that that by the Law is the effect of his oath, and not onely to the words of his oath. And if a man swear neuer to eat white meat, yet in time of extreme necessity, he may eat white meat, rather than dye, & not break his oath, though he affirmed it with an othe: for by the effect of his oath, extreme necessity was accepted, though it were not expressly excepted in the words of the oath: & so likewise though the words of the Bill bee to inquire whether such a man such a day and yeare, and in such a place did such a felony, yet the effect of the bill is to inquire whether he did the felony within the shire or no: & therefore the *Justices* before whome such Indictments bee taken, most commonly inforce the *Jurie* that they are bound to regard the effect of the bill, & not the forme.

The 54 Chapter.

And therefore there is no vntruth in this case neither in him that made the bill, ne yet in the Jurie, as me seemeth. D. But if the partie that owed the horse bying an action of trespassse, and declareth that the defendant toke h^e horse with force and armes, where hee tooke him without force and armes: how may the plaintife there be excused of an vntruth? S. And if the plaintif surmise on vntruth, what is that to the Court, or to the law, for they must beleue the plaintif, till that that he saith be denied by the defendant. And yet as this case is, there is no vntruth in the plaintife, to say he tooke the horse with force and armes, though he came neuer so secretly, & without weapon, for euery trespassse is in the law done with force and armes, so that if he be attainted and found guiltie of the trespass, hee is attainted of the force and armes: And finally the law bindgeth every trespassse to bee done with force, therefore the plaintife saith truly that he tooke him with force, as the law meaneth to bee force. For though he tooke the horse as a felon, yet vpon the felonious taking, the owner may take an action of trespass if he will, for euery felony is a trespassse and more. And so I haue shewed thee some part of my minde to proue that in those cases there is no vntruth, neither in the parties, neither in the Jurie, nor in the Law. Nevertheless, at a better leisure I will shew thee my mind more fully therin with good will as thou hast promised mee to doe in the cases of colours of the Masse, and of the ouster, that he before rehearsed.

¶ The viij question of the Doctor, whether the Statute of xlv. of Edward the third of Silua cedua stand with conscience.

Cap. 55.

In the 45. yere of the raigne of Ed. 3. It was enacted, that a prohibition should lie where a man is impleaded in the court Christian for Dismes of wood of the age of xx. yere or above, by the name of Silua cedua; how may that Statute stand with conscience that is so directly against the libertie of the Church, and that is made of such things as the parliament had no authoritie to make any law of? St. It appeareth in the said Statute, that it is enacted, that a Prohibition should lie in that case, as it had used to do before that time, and if the prohibition lay by a prescription before the Statute, why is not then the Statute good as a confirmation of that prescription? D. If there were such a prescription before the Statute that prescription was boide, for it prohibiteth the payment of Tithes of trees of the age of xx. yere or above, and paying of tithes is grounded aswell vpon the law of God, as vpon the law of reason, and against those Lawes lieth no prescription as it is holde most comonly by all men. S. That there was such a prescription before the said Statute, & if a man before the said Statute had bin sued in the spiritual court for tithes of wood of the age of xx. yere or above the prohibition lay, as

The 55. Chapter.

appeareth in the said statute : and it cannot be
 thought that a statute that is made by authori-
 ty of the whole realme, as well of the King and
 of the Lords spirituall & temporall, as of all the
 commons, will recite a thing against the truth;
 & furthermore I cannot see how it can be ground-
 ed by the law of God, or by the law of reason,
 that the x. part should bee paid for tith and no
 other portion but that, but I thinke that it bee
 grounded vpon the Law of reason that man
 should giue a reasonable portion of his goods
 temporall to them that minister to him things
 spirituall, for every man is bound to honoꝛ God
 of his proper substance, and the giuing of such
 portion hath not bin only vsed among faithfull
 people, but also among unfaithfull as it appea-
 reth Gene .7. where Corne was giuen to the
 priests in Egypt of comon barns. And S. Paul
 in his Epistles affirmeth the same in many
 places, as in his first Epistle to the Cor cap 9.
 where he saith, He that woꝛketh in the church,
 shall eate of that that belongeth to the Church:
 And in his Epistle to the Gal. cap. 6. he saith,
 Let him that is instructed in spirituall things,
 depart of his goods to him & instructeth him;
 And S. Luke cap. 10 saith, That the woꝛkeman
 is woꝛthie to haue his hire. All which sayings
 may right conueniently be taken and applyed
 to this purpose, that spirituall men which mi-
 nister to the people spirituall things, ought for
 their ministration to haue a competent living
 of them that they minister vnto. But that the
 tenth part should be assigned for such a portion
 and neither moꝛe nor lesse, I cannot perceiue
 that

that that should bee grounded by the Law of reason, nor immediatly by the Law of God: for before the Law written there was no certaine portion assigned for the spirituall Ministers, neither the x. part, nor the xij. part, vnto the time of Iacob: for it appeareth Gene. 28. that Iacob answered to pay Dismes which was among the Jewes for the x. part, if our Lord prospered him in his iourney, and if the x. part had bene due to him before that answer, it had bin in vaine to haue answered it, and so it had if it had bin grounded by the Law of reason: and as to that is spoken in the Euangelists, and in the new Law of Cythes, it belongeth rather to the giuing of cythes in the time of the old law, than of the new Law, as appeareth Matthew 23. and Luke 11. Where our Lord speaketh to the Pharises, saying, Woe to our Pharises, that they mince mints, rue, and herbes, & forget the iudgement and the charitie of God, these it becometh you to doe, and the other not to omit, that is to say, it becometh you to doe Justice, and charitie of God, & not to omit paying of cythes though it be of small things, as of mints, rue, herbes, and such other. And also that the Pharise saith Luke 17. I pay my cythes of all that I haue, it is to bee referred to the old Law not to the time of the new Law: Therefore as I take it the paying of Cythes, or of a certaine portion to spirital men for their spiritual ministracion to the people hath bin grounded in diuers maners: first before the law written, a certaine portion sufficient for the spirituall Ministers was due to them by the Law of nature; which
after

The 55. Chapter.

after them that bee learned in the Lawe of the Realme is called the law of reason, & that portion is due by all lawes. And in the law written, the Jewes were bound to giue the x. part to their priests aswell by the said awow of Iacob, as by the law of God in the old Testament called the Iudicialls. And in the new law the paying of the x. part. is by a law that is made by the Church. And the reason wherefore the x. part was obtained by the church to be payed for the tithe was this; There is no cause why the people of the new law ought to pay lesse to the ministers of the new law, than the people of the old Testament gaue to the ministers of the old Testament: For the people of the new Law be bound to greater things than the people of the old Law were, as it appeareth Mat. 5. Where it is said: Vnlesse your good workes abound aboue the workes of the Scribes & the Pharises, ye may not enter into the Kingdome of heauen. And the sacrifice of the old law was not so honourable as the sacrifice of the new Law is: for the sacrifice of the old law was only the figure, and the sacrifice of the new law is the thing that is figured, that was the shadow, this is the truth. And therefore the Church vpon that reasonable consideration ordained, that the x. part should be paid for the sustentance of the Ministers in the new Law, as it was for the sustentance of the Ministers in the old law, & so that law with a cause may be increased or minished to more portion or to lesse as shall be necessarie for them. Doct It appeareth Gen. 14. that Abraham gaue to Melchisedech
dinner,

dimes, and that is taken to be the x. part, and
 that was long before the law written, & there-
 fore it is to suppose, that hee did that by the law
 of God. S. It appeareth not by any Scripture
 that he did that by the commandment of God,
 ne by any revelation: And therfore it is rather
 to suppose that he did part of duty, and part of
 his owne free will, for in that he gave the di-
 mes as a reasonable portion for the sustenance
 of Melchisedech and his ministers, he did it by
 the commandment of the Law of reason, as
 before appeareth, but that hee gave the x. part,
 that was of his free will, & because he thought
 it sufficient & reasonable: but if he had thought
 the xij. part, or the xij. part had sufficed, hee
 might have given it, and that with good con-
 science. And so I suppose that in the new law,
 the giving of the x. part is by a Law of the
 Church, and not by the Law of God, unless it
 be taken that the law of the church is the law
 of God, as it is sometime taken to be, but not
 appropiately or immediatly, for that is taken
 appropiately to be the law of God, that is con-
 tained in scripture, that is to say, in the old te-
 stament and in the new. Doct. It is somewhat
 dangerous to say that tythes bee grounded on-
 ly upon the law of the Church: for some men,
 as it is sayd, say that mans Law bindeth not
 in conscience, & so they might happen to make a
 boldnesse thereby to deny their tythes. S. I trust
 there be none of that opinion, & if there be it is
 great pittie: And neuerthelesse they may be com-
 pelled in that case by the law of the Church to
 pay their tythes aswel as they shold be if paying

The 55. Chapter.

of tithes were grounded mererly vpon the law
of God. D. I thinke well it be as thou saist, and
therefore I hold me contented therein. But I
pray thee shew mee thy minde in this question.
If a whole country prescribed to pay no tithes
for Corne or hay, nor such other, whether thou
thinke that that prescription is good. St. That
question dependeth much vpon that that is said
before: for if paying of the x. part be by the law
of reason, or by the law of God, the prescription
is void, but if it be by the law of man, then
it is a good prescription, so that the Ministers
haue a sufficient portion beside. U. Iohn Gerson
which was a Doctor of diuinitie, in a treatise
that he named *Regulæ morales*, saith, that Dis-
mes be paid to Priests by the law of God. S.
The words that he speaketh there of the mat-
ter be these, *Solutio decimarū sacerdotibus, est
de iure diuino, quatenus inde sustentē: sed quo-
ad tam hanc vel illā assignare, aut in alios reddi-
tus cōmutare, positivi iuris existit*, that is thus
much to say, The paying of diemes to Priests,
is of the law of God, & they may thereby be sustai-
ned, but to assigne this portion or p, or to chāge
it to other rents, that is by the law positine: & if
it should bee taken that by that word *Decima-
rū*, which in English is called dismes or tiths,
that he meant the x. part, and that that x. part
should be paid for tithe by the law of God, then
is the sentence that followeth after against
that saying: for as it appeareth aboue, the next
saith afterward thus, but to assigne this porti-
on or that, or to change it into other rents be-
longeth to the law positine, that is, to the law
of

of man, and if the x. part were assigned by God, then may not a lesse part be assigned by the law of man, for that should be contrarie to the Law of God, and so it should bee void, And mee thinketh that it is not likely that so famous a clerk would speake any sentence contrary to the law of God, or contrarie to that he had spoken before: & to proue he meant not by the terme Decima, that diuines should alway be taken for the x. part, it appeareth in the 4. part of his woordes in the 31. title Leterę, where he saith thus, *Nō vocatur portio curatis debita propterea decimę, eo quod semper sit decima pars; immo est interdum vicesima aut tricesima*: That is to say, the portion due to curats, is not therfore called diuines, for it is alway the x. part, for sometime it is the xx. or the xxx. part: and so it appeareth that by this word *decimarū*, he meant in the text before rehearsed a certaine portion, & not precisely the x. part, and that the portion should bee paid to priests by the law of God, to sustaine them with, taking as it seemeth the law of reason in that saying for the law of God, as it may one way be well and conueniently taken: because the law of reason is giuen to every reasonable creature by God. And then it folloiweth presently, that it belongeth to the law of man to assigne this portion or that, as necessity shall require for their sustentance, and then his saying agreeth well to that that is said before, that is to say, that a certaine portion is due for priests, for their spirituall ministracion by the law of reason. And then it would folloiw thereupon, that if it were ordained for a law, that all
pay:

The 55. Chapter.

paying of tythes should from henceforth cease,
 & that euery curat should haue assigned to him
 such certain portion of land, rent, or annuity, as
 should be sufficient for him, & for such ministers
 as should be necessarie to bee vnder him, accor-
 ding to the number of the people there, or that
 euery Parson or housholder should giue a
 certain sum of money to pble. I suppose the law
 were good: & that was the meaning of Io. Ger-
 son, as it seemeth in his words before rehearsed,
 where he saith, but to change tythes into o-
 ther rents, is by the law positue, that is to say,
 by the Law of man. And some thinke that if a
 whole Countre prescribe to bee quite of both
 tythes of coine or grasse, so that the Spirituall
 Ministers haue a sufficient portion beside to
 liue vpon, that is a good prescription, & y they
 should not offend, that in such countreys payed
 no tythes: for it were hard to say, that all the
 men of Italie, or of the East parts bee dam-
 ned, because they pay no tythes, but a certaine
 portion after the custome: therefore certain it
 is, to pay such a certaine portion, aswel they as
 all other be bound, if the church aske it, any cu-
 stome notwithstanding. But if the Church
 aske it not, it seemeth that by that not asking,
 the church remitteth it, & an example therof we
 may take of the Apostle Paul, that though he
 might haue taken his necessarie liuing of them
 that he preached to, yet he took it not, & neuer-
 theles they that gaue it him not, did not offend
 because he did not aske it. But if one man in a
 town would prescribe to be discharged of tyths
 of coine & grasse, mee thinketh the prescription
 is

is not good, vnles he can proue þ hee recompenceth it in another thing: for it seemeth not reasonable that hee should pay lesse for his tythes than his neighbors do, seeing that the spiritual ministers are bound to take asmuch diligence for him, as they be for any other of þ parish: wherfore it might stand with reason that he should be compelled to pay his tiths as his neighbors doe, vnles he can proue that he payeth in recompence thereof, more than the 1. part in another thing. Nevertheless I leave the matter to þ iudgement of other, & then for a further proufe, though the said prescription of not paying tithes for trees of 20. yere & above, were not good, yet that that of cozne & grasse should be good, some make this reason: they say, þ there is no tith but it is either a prediall tith, or a personall tith, or a mixt tith, & they say þ if a tith should be paid of trees whē they be sold, that the tythe were not a prediall tith, for the prediall tith of trees is of such trees as bring forth fruits & increase yerely, as apple trees, nut trees, pearre trees, & such other, whereof the prediall tith is the apples, nuts, pearres, & such other fruits as come to thē yerely, & when the fruits be tithed, if the owner after sell the trees, there is no tith due thereby, for two tiths may not be paid of one thing, & of those tithes, þ is to say, of prediall tithes was the commandment given in the old law to the Iewes, as appeareth Leuit. 27. where it is said, Omnes decimæ terræ, siue de pomis arborum, siue de frugibus, domini sunt, & illi sanctificatur, that is to say, all tiths of the earth, either of apples, of trees, or of graines, be our lordes, & to him they be sanctified,

and

The 55. Chapter.

and though the said Law speaketh only of apples, yet it is understood of all manner of fruits, And because it saith that all the tythes of the earth be our Lords, therefore calves, lambes, and such other must also be tythed, and they bee called by some men pyed all tythes, that is to say, tythes that come of the ground, howbeit they call them onely Predials mediate, & they bee the same tythes that in this writing, bee called mixt tythes, and the other tythes (that is to say) tythes of apples & cozne, & such other bee called Predials immediate, for they come immediately of the ground, and so do not mixt tythes, as evidently appeareth. Do. But what thinkest thou shall be the prediall tythes of ashes, elmes, sallowes, alders, and such other trees as beare no fruits, whereof any profit commeth, why shall not the 10. part of the selfe thing bee the tythe thereof, if they be cut downe as well as it is of cozne and grasse? Sr. For I thinke that there is to that intent great diversitie betweene cozne, grasse, and trees, and that for diuers considerations, whereof one is this: The property of cozne & grasse is not to grow ouer one yere, and if it doe, it will perish and come to nought, and so the cutting downe of it, is the perfection and preservation thereof: and the speciall cause that any increase followeth of the same: And therefore the tenth part of the increase shall be payd as a prediall tythe, and there no deduction shall bee made for the charges of it: And so it is of sheepe and beasts that must bee taken and killed in time, for els they may perish and come to nought: but when trees be felled, that felling

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is not the perfection of the trees, ne it causeth not them increase, but to decay: For most commonly the trees would bee better if they might grow still. And therefore vpon that that is the cause of that decay & distraction of them, it seemeth there can no pzedial tith arise: & some mē say that this was the cause why our Lord in the said Chapter of Leuit. 27. gaue no commaundement to tythe the trees, but the fruits of the trees onely. Do. It appeareth in Paralip. 31. that the Iewes in the time of the King Ezechias offered in the Temple all things that the ground brought forth, and that was trees as well as corne & grasse. Sr. It appeareth not that they did that by the commaundement of God, and therefore it is like that they did it of their owne deuotion, and of a fauour that they had aboue their duetie to the repairing of the Temple, which the king Ezechias had thē commaunded to be repaired: And so that text promoueth nothing that tythe should bee payed for trees: And therfore they say farther, that truth it is, that if a man to the intent hee would pay no tythe, would wilfully suffer his Corne and grasse to stand still and to perish, hee should offend conscience thereby: but though hee suffer his trees to stand still continually without selling, because hee thinketh a tythe would bee asked, if he felled them (so that he doe it not of an euill will of the Curate) hee offendeth not in conscience, ne hee is not bound to restitution therefore, as he should be if it were of corne and grasse, as befoze appeareth. And another diuersitie is this: In this case of tythe wood, &

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The 55. Chapter.

tythe thereof would serue so little to that pur-
 pose that tythes be paid for, that it is not like-
 ly that they that made the Law for payment of
 tithes intended that any tithe should bee paid
 for trees or wood: For the spirituall ministers
 must of necessitie spend dayly and weekly, and
 therefore the tithes of trees or wood that com-
 meth so seldome, would serue so little to the
 purpose that it should be paid for, that it would
 not helpe them in their necessitie: So that if
 they should bee giuen to trust thereto, though
 it might helpe him in whole time it should hap-
 pen to fall, yet it should deceiue them that tru-
 sted to it in the meane time, and also should
 leaue the Parish without any to Minister to
 them. D. J. I would well agree that for trees that
 beare fruit there should no prediall tithe be paid
 when they be sold (for the prediall tithe of them
 is the fruits that come of them) and so there
 cannot bee two predials of one thing, as thou
 hast saide. But of other trees that beare no
 fruit, mee thinketh that a prediall tythe should
 bee paid when they be sold, and so it appeareth
 that there ought to bee by the constitution pro-
 uinciall made by the reuerend father in God
 Robert Winchelsie late Archbishop of Canter-
 burie, where it is said and declared, that Silua
 cedua is of euerie kind of trees that haue being
 in that they should bee cut, or that bee able to
 bee cut, whereof wee will, saith he, that the pos-
 sessour of the said woods bee compelled by the
 censures of the Church to pay to the Parish
 Church, or mother Church, the tithe as a reall
 or prediall tithe: And so by vertue of that con-
 stitution

Constitution prouinciall a predial tyth must be paid
 of such trees as haue no fruite : For I would
 well agree that the said constitution prouinciall
 stretcheth not to trees þ̄ beare fruit as though
 þ̄ woods be generall for all trees (as befoze ap-
 peareth.) Stu. I take not the reason why a pre-
 dial tyth should not be paid for trees that beare
 fruit to bee, because t̄wo prediall tythes cannot
 be paid for one thing : for when the tyth is paid
 of lambes, yet shall tythe be paid of swill of the
 same sheepe (for it is paid for another increase)
 and so it may bee said that the fruit of a tree is
 one increase, and the felling another : But
 I take the cause to bee for the t̄wo causes be-
 foze rehearsed, & also soasmuch as the felling
 is not properly an increase of the trees but a
 destructiō of the trees, as it is said befoze. And
 farther I would heare thy mind vpon the said
 constitution prouinciall, which will, that tythe
 should be paid for trees by the possessors of the
 wood, that if the possessor sell the wood for C.
 l. and giue the buyer a certain time to fell it in,
 what tyth shall the possessor pay as long as the
 wood standeth ? Do. I thinke none, for the pre-
 diall tythe commeth not till the wood bee felled,
 and a parsonall Tythe hee cannot pay, no more
 than if a man plucke downe his house and sel-
 leth it, or if he sel all his land, in which cases I
 agree well he shall pay no tythe neither parso-
 nall nor prediall. Stu. And then I put case that
 the buyer selleth the wood againe as it is stan-
 ding vpon the ground to another for CC. l.
 what tythe shall be paid then ? Doct. Then the
 first buyer shall pay tythe of the surplusage that

The 55. Chapter.

he taketh ouer the C. r. that he paid as a Personall Tithe. Sc. And then if the second buyer after that cut it downe and sell it when it is cut downe for lesse then he paid, what tith shall then be paid?

D. Then shall he that selleth them pay 8 tith for the trees as a pzediall tithe. Sc. I cannot see how that can bee, for hee neither hath the trees, that the pzediall tithe should be paid for, if any ought to be paid, nor he is not possessor of the ground where the trees grow: And therefore if any pzediall tithe should be paid, it should be paid either by the first possessor by reason of the words of the said constitution pzoouinciall, which be, that the tithe shall be paid by the possessor of the wood, or by the last buyer, because hee hath the trees that should bee tithed, and by the first possessor the tithe cannot bee paid as a pzediall for hee cut them not downe, ne they were not cut downe vpon his bargaine, and by the last buyer it cannot be paid neither as a pzediall tithe, for the said constitution saith, that the possessor of the woods should be compelled to pay it. And therefore I suppose that the troth is, that in that case no tith shall bee paid, for as to the last seller, hee shall pay no personall tithe, for hee gained nothing, as it appeareth before, and no pzediall tithe shall bee paid, for it should bee against the said pzescription, and also the cutting downe is the distruction of trees and not their pzeseruatiou, as is said before.

D. Then takest thou the said constitution to be of small effect, as it seemeth. S. I take it to be of

of this effect, that of wood above twentie yeare it bindeth not, because it is contrarie to the common law, and to the said prescription, that standeth good in the common law: but of wood under xx. yere whereof tith hath ben accustomed to be payed, the constitution is not against the said prescription, because paying of tith under xx. yeare is not prohibited, but suffered by the said statute: howbeit some say, that by the very rigour of the common Law tythes should not be payed for wood under xx. yeare, no more than for above xx yere, and that prohibition in that case lyeth by the common law: Nevertheless, because it hath bin suffered to the contrary, and that in many places tythe hath bin paid thereof, I passe it over, but where tyth hath not bin payed of wood under xx. yeare, I thinke none ought to be payed at this day in law nor conscience: But admit, that the sayd constitution taketh effect for payment of the wood under xx. yeares as of a pzediall tythe, yet I cannot see how the tythe thereof should be payed by the possessor of the wood, if he sell them, but that it should be payed rather by him that hath the trees, for the constitution is, that the tythe shall be payed as a reall or pzediall tyth, and that is the tenth part of the same trees, as it is of coze. And if a man buy coze upon the ground, the buyer shall pay the tythe and not the seller, and so it should seeme to be here, and what the constitution meant to decree the contrarie in tythe wood, I cannot tell, vnielſe the meaning were to induce the owners to pay Tythes of great trees when they sell them to their owne vse:

The 55. Chapter.

Which mee thinketh should bee verie hard to
 stand with reason, though the said statute had
 neuer been made, as I haue said before. And
 furthermoze I would here (vnder correction)
 moue one thing, & that is this; That as it se-
 meth that they that were at the making of the
 said Constitution, & knew the said prescription,
 did not follow the direct order of charity there-
 in so perfectly as they might haue done: For
 when they made the said constitution prouin-
 ciall directly against the said prescription, they
 set Law against custome, and power against
 power, and in maner the Spiritualitie against
 the Temporalty, wherby they might well know
 that great variance & suit should follow; And
 therefore if they had clearely seene that the said
 prescription had bene against conscience they
 should first haue moued the King and his coun-
 sell & the nobles of the realme to haue assented
 to the reformation of that prescription, and not
 to make a law as it were by authoritie & pow-
 er against the Prescription, and then to threat
 the people, & make them beleue that they were
 all accursed that kept the said Prescription or
 maintained it. And it seemeth to stand hardily
 with conscience to report so many to stand ac-
 cursed for following of the said statute and of
 the said prescription as there doe, and yet to do
 no more than hath been done to bring them out
 of it. Do. We thinketh that it is not conueni-
 ent that lay men should argue the laws and the
 decrees or constitutions of the Church, and
 therefore it were better for them to giue cre-
 dence to spirituall rulers that haue care of their
 soules

sonles than to trust to their owne opinions, and
 if they would doe so, then such matters would
 much the moze rather cesse, than they will go by
 such reasonings. **Sc.** In that that belongeth to
 the articles of the faith, I thinke the people be
 bound to beleue the Church, for the Church
 gathered together in þ holie Ghost cannot erre
 in such things as belong to the Catholique
 faith: But where the church maketh any lawes
 whereby the goods or possessions of the people
 may be bound, or by this occasion or that may
 be taken from them, there the people may law-
 fully reason whether the Lawes binde them
 or not, for in such Lawes the Church may erre
 and bee deceiued, and deceiue other, either for
 singularitie, or for couetice, or some other cause:
 and for that consideration it pertayneth most
 to them that bee learned in the Lawe of the
 realme to know such lawes of the Church, as
 treat of the ordering of lands or goods & to see
 whether they may stand with the Lawes of the
 realme or not: And therfore it is necessary for
 them to know the Lawes of the Church that
 treat of Dismes, of Executors, of testaments,
 of Legacies, bastardie, matrimonie, and diuers
 other, wherein they bee bound to know when
 the Law of the Church must be folloved, and
 when the law of the realme; wherof because it
 is not our purpose to treat, I leaue to speake
 any moze at this time, and will resort againe
 to speake of Tythes, wherein some men say
 that of Tinne, Cole, and Lead, no tythe should
 bee payed when they be sold by the owner of the
 ground, because it is part of the inheritance,

and it is moze rather a distraction of the inheritance, than an encrease : And therefore they say, that if a man take a Tinne worke, and give the Lord the tenth dish according to the Custom, that the Lord shall pay no tythe of that tenth dish, neither pzediall nor personall, but if the other that taketh the worke have gaines & advantage by the worke, it seemeth that it were not against reason that hee should pay a personall Tythe of his gaines, the charge deducted. Do. I pray thee shew me first what thou takest for a personall tythe, and vpon what ground personall tiths be paid as thou thinkest, so that one of vs mistake not another therein. I wil with good will : and therefore thou shalt vnderstand that, as I take it, personall tythes be not paid for any increase of the ground, but for such profit as cometh by the labour or industrie of the person, as by buying and selling, and such other, and such personall tythes, as I take it, must be ordeied after the Custom, and the Church hath not vsed to leuie those Tythes of compulsion, but by conscience of the parties : Neuerthelesse Raimond sayth, that it is good to pay personall tythes, or with the assent of the parson, to distribute them to poore men, or els to pay a certain portion for the whole. But as Innocent sayth, where the custome is, that they should bee payed, the people bee bound to pay them as well as pzedialls, the expences deduct. Howbeit in the Church of England they vse to sue for such personall tythes as well as for pzedialls, & that is by reason of the constitution prouinciall, that was made by Robert Winchelsie,

chellie, By the which it was ordayned, that personall Tythes should be paid of crafts and Merchandise, and of the lucre of buying and selling, & in like wise of Carpenters, Smiths, weavers, Malons, and all other that worke for hire, that they shall pay tythes of their hire except they will give any thing certaine to the vse, or the light of the Church, if it so please the Parson: And in another place the sayd Archbishop sayeth, that of the pashnage of woods, and such other things &c. and of fishings, trees, bees, doves, and of diuers other things there remembred, and of crafts, and of buying and selling, & of the profits of diuers other things there recited, euery man should helpe satisfie competently in the Church, to the which they bee bound to giue it of right, no expences by the giuing of the sayd Tythes deducted or withholden, but onely for the payment of tythes of crafts and of buying and selling: And by reason of the said constitutions prouincialls, sometimes suites bee taken in the Spirituall Court for personall tythes, and thereof many men do maruaile, because deductions many times must bee referred to the conscience of the parties. And they maruaile also why a Law should bee made in this realme for paying of Personall tythes, more than there is in other Countries. And here I would gladly moue thee farther in one thing concerning such personall tythes, to know thy mind therein, and that is, If a man giue to another a horse, and hee selleth that horse for a certaine summe, shall hee pay any tythe of that summe?

D. what

The 55. Chapter.

Do. what thinkest thou therein? St. I thinke that he shall pay no tythe: For there as I take it the profit commeth not to him by his owne industrie, but by the gift of another, and as I take it, personall tythes be not paid for euery profit or aduantage that commeth newly to a man, except it come by his owne industrie or labour, and so it doth not here. And also if he should pay tythe of that he sold the horse for, hee should pay tythe for the verie whole value of the thing. And as I take it, the personall tythes for buying and selling shall neuer bee payed for the value of the thing, but for the cleere gaines of the thing: And therefore I take the cases before rehearsed, where a man selleth his land, or pulleth downe a house, and selleth the stoffe, that hee should there pay no tith, that it is there to be vnderstood, that he hath not land or house by gift or by descent: For if a man buy land, or buy timber and stoffe of a house, and sell it for a gaine, I suppose that hee should pay a personall tythe for that gaine. And this case is not like to a fee or annuittie graunted for counsell, where the whole fee shall bee tythed for & charges deducted, or some certaine summe for it by agreement, for there the whole fee commeth for his counsell, which is by his owne industrie. But in the other case it is not so, and the same reason as for the personall tythe might be made of trees, when they descend or be giuen to any man, and hee selleth them to another, that hee shall pay no personall tythe. Do. We thinke that if the horse amend in his keeping, & then he sell the horse, that then the tythe shalbe paid of

of that that the hoxle hath increased in value after the gift, and so it may be of trees, that hee shall pay tithe of that that the trees may bee as-
 mended after the gift oz descent. Secu. Then the
 tythe must be the x. part of the increase the ex-
 pences deducted, and then of trees the charges
 must also be deducted, for it is then a Parso-
 nall tythe, and there is no tree that is so much
 worth as it hath hurt the ground by the grow-
 ing: therefore there can no Parsonall tith bee
 paid by the owner of the ground when hee sel-
 leth them, though they haue increased in his
 time. Neuerthelesse I will speake no farther
 of that matter at this time, but will shew that,
 that if Tin, Lead, Cole, oz trees bee sold, that
 a mixt tythe cannot grow thereby; For a mixt
 tythe is properly of Calues, Lambes, Pigs,
 and such other that come part of the ground
 that they bee fed of, and part of the keeping,
 industrie, and ouersight of the owners, as it is
 said before: But Tin, Lead, and Cole are
 part of the ground and of the freehold, & trees
 grow of themselves, and be also annexed to the
 freehold, and will grow of themselves; and also
 the mixt tythe must be payed yerely at certaine
 times appointed by the Law oz by custome of
 the countrie, but it may happen that Tinne,
 lead, cole, & trees shall not be felled oz taken in
 many yeres, & so it seemeth it cannot be any mixt
 tithe, & these be some of the reasons, which they
 would maintein that stat. a prescription to be
 good, make to proue their intent as they thinke.
 D. what think they, if a man sell the lops of his
 wood, whether any tith ought there to be paid?

S They

The 55. Chapter.

S. They thinke all one law of the trees and of the lops. Do. And if hee vse to fell the lops once in xij. or xvi. yeare, what hold they then? St. That is all one. D. And what is the reason why Tithe ought not bee payed there aswell as for wood vnder xx. yeare? St. For they say, that the lops are to be taken of the same condition as the Trees bee what time soeuer they be felled, and that no custome will serue in that case against the Statute, no moze that it should do of great trees. D. And what hold they of the barke of the trees? Stu. Therein I haue not heard of their opinion, but it seemeth to be one Law of the lops. Doct. I perceiue well by that thou hast said before, that thy minde is, that if a whole Countrie prescribe to be quite of Tythes of trees, cozne, and grasse, or of any other tythes, that that prescription is good, so that the spirituall ministers haue sufficient beside to liue vpon, dost thou meane so? S. Very berily. D. And then I would know thy minde, if any man contrarie to that prescription were sued in the Spirituall Court for Cozne and grasse, or any other Tythes, whether a Prohibition should lye in that case, as it did after thy minde before the sayd Statute, where a man was sued in the Spirituall Court for Tythe Wood.

S. I thinke nay. D. And why not there, aswell as it did where a man was sued for the tythe wood? S. For as I take it, there is great diuersitie betwene the cases, and that for this cause; There is a Maxim in the law of England, that if any suit be taken in the Spirituall Court

court whereby any goods or lands might bee recovered, which after the grounds of the law of the Realme ought not to bee sued there, though percase the Kings Court shall hold no plea thereof, that yet a Prohibition should lie, and after when it had continued long that no tythes were paid of wood, because of the said prohibition, and that after by procelle of time some Curats began to aske Tythes of wood, contrarie to the Law and contrarie to the said prescription, so that variance began to rise betwene Curats and their Parishoners in that behalfe, then for appealing the said variance the said Statute was made, and that as it seemeth more at the calling on of the spiritualtie, than of the Temporalty; For the statute doth not expressly graunt that the Prohibition in that case of tythe wood should lye so largely as some say it lay by the Law: Howbeit, it doth not restraine the Common Law therein, as it appeareth evidently by the words of the Statute, and so after same men it appeareth before the Statute, and also after the Statute (as I have touched before) that the spiritual Court ought not in that case to haue made any procelle for tythe wood: and therefore if they did, a Prohibition lay by the comon Law. And like law is if a spiritual court make proces upon such a Legacie as by the law of the realme is hold. As if a man bequeth to one another mans horse, & the spiritual court thereupon maketh Procelle to execute that legacie, there a Prohibition lyeth: For it appeareth evidently in the libell, if all the truth appeareth in the libel, that

The 55. Chapter.

In the law of the realme the legacie is boide to all intents: And that hee to whom the legacie is made, shall neither haue the horse nor the value of the horse. And in likewise if a man sell his land for C. l. and he is sued after in the spirituall court for tithes of the said C. l. There a prohibition shall lye, for it appeareth in that case onely in the libell that no tithes ought to be paid, and that the spirituall Law ought not in that case to make any processe whereby the goods of him that sold the land might be taken from him against the law of the Realme. And vpon this ground it is, that if a man were sued in the Spirituall Court, now sith the statute for a Mortuarie, that a Prohibition should lye, for it appeareth in the libell, that sith the statute there ought no suit to be taken for Mortuaries: and the same Law is, if any suit were taken in the Spirituall court for a new dutie that is of late taken in some places vpon leases of Parsonages and Vicarages, which is called Dimission noble, for it appeareth evidently in the libell if any be made thereupon, that no such Processe ought by the law of the Realme to be made in that behalfe. But in the case of Tithes corne or grasse, or such other things, wherein thou hast desired to know my mind, there appeareth nothing in the libell but that the suite thereof, of right appertaineth to the spirituall Law, and so for any thing that appeareth, the partie may bee holpen in the Spirituall Court by the prescription: And if the case were so farre put that in the Spirituall Court they would not allow the said prescription, yet I thinke no

prohibition should lye: For though the spirituall Judges in a spirituall matter deny þ parties of iustice, yet the Kings lawes cannot reforme that, but must remit to their conscience: But if there were some remedie provided in that case, it were well done: For some men say, that in the spirituall Court they will admit no plea against tythes. And also if a composition were made by assent of the Patron and also of the Ordinarie between a Parson a one of his parishioners, that the Parson & his successors should haue for a certaine ground so many quarters of cozne for his tythe yerely, & after contrarie to the composition the Parson in the spirituall Court asketh the tythes as they fall, that in this case no Prohibition should lye, ne yet though the case were further put, that the composition were pleaded in the Court & were disallowed, but all resteth in the conscience of the Judge spirituall (as is said befoze.) Howbeit, because some be of opinion that a Prohibition should lye in this last case, therefore I will refer it to the iudgement of other: But in the case of prescription, befoze rehearsed, I take it for the clearer case, that no prohibition should lie as I haue said befoze. And I beseech our Lord that this matter & such other like thereto, may be so charitably looked vpon, that there bee not hereafter such diuisions ne such diuerſities of opinions therein, as hath bin in time past, whereby hath followed great costes and charges to many persons in this Realme: And that hath moued mee to speake so farre in this Chapter, and in diuers other Chapters in this present booke

The 55. Chapter.

booke as I haue done: Not intending thereby to give occasion to any person to withhold his tithes that of right ought to bee payed, ne to alter the portion therein befoze accustomed, but that (as me thinketh) they ought to be claimed by the said title as they ought to bee payed, and by none other. And that it may also somewhat appeare that the said statute of 45. Edw 3. was well and lawfully made, and vpon a good reasonable consideratiō, and that the said prescription is good also, so that no man was in any danger of excommunication for the making of the said statute, noz yet is not for the obseruing thereof, ne yet of the said prescription, as it is noted by some persons that there should bee. And thus I commit thee vnto our Lord, who ever haue both thee and mee in his blessed keeping euerlastingly. Amen.



The Table of the first Booke.

T He Introduction.	
Of the law eternall.	Cap: 1
Of the law of reason, the which by Doct- ors is called the Law of Nature of reasona- ble creatures.	2
Of the law of God.	3
Of the law of man.	4
Of the first ground of the law of England.	5
Of the 2. ground of the law of England.	6
Of the 3. ground of the law of England.	7
Of the 4. ground of the law of England.	8
Of diuers cases wherein the Student doubteth whether they be onely maxims of the law, or that they be grounded vpon the law of reason	9
Of the 5. ground of the law of England	10
Of the 6. ground of the law of England.	11
The first question of the Doctor, of the Law of England and conscience.	12
What Sincerchis is.	13
Of reason.	14
Of conscience.	15
What is equitie.	16
In what maner a man shall be holpen by equi- tie in the laws of England.	17
Whether the statute hereafter rehearsed by the Doctor be against conscience or not.	18
Of what law this question is to bee vnderstood that is to say, where conscience shalbe ruled after the law.	19
Of diuers cases where conscience is to be orde- red after the law.	20
Z	The

The Table.

The first question of the Student.	21
The 2. question of the Student.	22
The 3. question of the Student.	23
The 4. question of the Student.	24
The 5. question of the Student.	25
A question made by the Do. how certain recoveries that be used in the kings Court to defeat tailed land, may stand with conscience.	26
The first question of the Student, concerning tailed lands.	27
The 2. question of the Student concerning tailed lands.	28
The 3. question of the Student concerning tailed lands.	29
The 4. question of the student concerning recoveries of inheritance intailed.	30
The 5. question of the student concerning tailed lands.	31
The 6. question of the student concerning tailed lands.	32

The Table of the second Booke.

The Introduction.

The first question of the student, whether the tenant in tayle after possibilitie of issue extinct, may with conscience doe Wast.
Cap. 1.

What is vnderstood by this terme when it is said, thus it was at the common law. 2

The 2. question of the student, whether the goods of men outlawed be forfeit in conscience as they be by the law. 3

The

The Table.

The 3. question of the student is of Wast done by a stranger in the lands that be in the hāds of particular tenants &c. 4

The 4. question of the student, whether a man may with consciēce be of cōusel against him that he knoweth is the heire of right, but he is certified Bastard by the Ordinarie. 5

The 5. question of the student, whether a man may with conscience bee of counsell with a man at the Common Law, knowing that he hath sufficient matter to be discharged in the Chancery that he may not plead in the common Law. 6

The 6 question of the student, whether a man may with conscience be of counsell against the feoffee of trust in an actiō of trespass that he bringeth against his feoffor of trust for taking the profits. 7

The 7. question of the student, if a man that by way of distresse cometh to his debt, but he ought not to haue distrained for it, what restitution is he bound to make. 8

For what thing a man may lawfully distraine. 9

The 8. question of the student, whether executors be bound in conscience to make restitution for a trespassse done by the testatour, and whether they be bound to pay debts vpon a contract first, or make the said restitution. 10

The 9. question of the student, whether he that hath goods deliuered him by force of a legacy, is bound in cōsciēce to pay the debt vpon a contract that the testator ought if the executors haue no other goods in their hāds. 11

The Table.

The 10. question of the student, if a man haue
issue 2. sons and died seised of certaine lands
in fee, the eldest dieth without issue, the yon-
gest recovereth by assise of Mortdacester the
land, with damages from the death of the fa-
ther, whether there hee be bound in consci-
ence to pay the damages to the executors of
the eldest brother for the time he liued. 12

The 11. question of the student, what damages
the Tenaunt in Dower shall recouer in con-
science where her husband dyed not seised,
but shee demaunded her dower and was de-
nied. 13

The 12. question of the student, if a man know-
ing another to haue right to his land, causeth
a fine with proclamation to be leuied accor-
ding to the Statute, and hee that hath right
maketh no claime within 5. yeares, whether
hee be barred in conscience as hee is in the
Law. 14

The 13. question of the student, if a mā that hath
had a child by his wife doe that in him is to
haue possession of his wiues lands, and she di-
eth or he can haue it, whether in conscience
he shalbe renant by the curtesie. 15

The 14. question of the student, if the grantor
of a rent enfeoffe the grantee of the rent of
part of the lands &c. whether the whole rent
be extinct in conscience, as it is in the Law. 16

The 15. question of the student, if he that hath
a rent out of two acres be named in a reco-
uerie of the one acre he not knowing there-
of

The Table.

of &c. whether his whole rent be extinct in
conscience &c. 17

The 16. question of the student, if a man haue a
villeine for terme of life, and the villein pur-
chaseth lands in fee, and he that hath the vil-
lein entreteth, whether he may with conscience
keep the lands to him and to his heires as he
may by the law. 18

The 17. question of the student, if a man in the
case next before enforme him that is in the
reuerfio of the villein, that after the death of
the villein he hath right to the land & coun-
selleth him to enter, whereupon great suit &
charges follow, what daunger that is to him
that gaue the counsell. 19

The 18. question of the student is vpon a feoffe-
ment made vpon conditio that the feoffee shall
pay a rent to a stranger, how the feoffement
shall weigh in Law in conscience. 20

The 19. question of the student vpon a feoffe-
ment in fee, & it is agreed that the feoffee shal
pay a rent to a stranger, how the feoffement
shall weigh in Law and conscience. 21

How vses in land began, and by what law, & the
cause why so much land is put in vse. 22

The diuersities between two cases, whereof one
is put in the 20. Chapter, and the other in the
21. Chap. of this present booke. 23

What is a nude contract or a naked promise af-
ter the laws of England, and whether an acti-
on may lye thereupon. 24

The 20. question of the student, if a man that
hath two sonnes, one before espousels, and
the

The Table.

the other after espousels, by his wil bequeatheth to his sonne and heir all his goods, which of the sonnes shall haue his goods in conscience. 25

Whether an Abbot may with conscience present to an Aduowson of the Church that belongeth to the house without assent of the Couent. 26

If a man find beastes in his Corne doing hurt, whether he may by his owne authoritie take them and keepe them till hee be satisfied for the hurt. 27

Whether a gift made by one vnder the age of 25. yeares be good. 28

If a man be conuict of heresie before the Ordinarie, whether his goods be forfeit. 29

Where diuers Patrons bee of an Aduowson, the church voideth, the patrons vary in their presentments, whether the Bishop shall haue libertie to present which of the Incumbents that he will. 30

How long time the patron shal haue to present to the benefice. 31

If a man be excommenged, whether he may in any case be assoyled without making satisfaction. 32

Whether a Prelate may refuse a Legacie. 33

Whether a gift made vnder a condition be void if the Soueraign only break the conditiō. 34

Whether a couenaunt made vpon a gift to the church that it shall not be aliened, be good. 35

If the Patron present not within vj. moneths, who shall present. 36

Whe.

The Table.

Whether the presentment and collation of all benefices and dignities voiding at Rome belong onely to the Pope.

If a house by chance fall vpon an horse that is borrowed, who shall beare the losse. 38

If a Priest haue won much money by saying Masse, whether hee may giue those goods or make a will of them. 39

Who shall succeed a Clerke that dyeth intestate. 40

If a man be outlawed of Felonie, or be attainted for murther or felonie, or that is an Ascismus, may be slaine by euerie stranger. 41

Whether a man shall bee bound by the act or offence of his seruant or officer. 42

Whether a Villeine or a bond man may giue away his goods. 43

If a Clarke be promoted to the title of his Patrimonic and after selleth his patrimony, and falleth to pouertie, whether he shall haue his title therein. 44

Diuers questions taken out by the Student of the summs called Summa Rosella, & Samma Angellica, which me thinketh are necessarie to bee seene how they stand and agree with the law of the realme. 45

Where ignorance of the Law excuseth in the Laws of England, and where not. 46

Certaine cases & grounds where ignorance of the deed excuseth in the Lawes of England, and where not. 47

The first question of the D. how the law of England may bee sayd reasonable that prohibiteth &c. 48

The

The 1. question of the D. whether the warrantie
of the yonger brother that is taken as heire,
because it is not knowne but that the eldest
brother is dead, be in conscience a bar to the
eldest brother, as it is in the law. 49

The 3. question of the D. whether if a man pro-
cure a collaterall warrantie, to exunct a right
that hee knoweth another man hath to land,
be a bar in conscience as it is in the law. 50

The 4. question of the Doct of the wreck of the
Sea. 51

The 5. question of the D. whether it stand with
conscience to prohibite a Iurie of meat and
drinke till they be agreed of their verdict. 52

The 6. question of the Do. is whether the co-
Jours that bee giuen at the Common Law in
Assises, actions of trespassse, and diuers other
actions, stand with conscience, because they
be most commonly feined, and not true. 53

The 7. question of the D. concerning the plea-
ding in Assise whereby the tenants vse some-
time to plead in such manner that they shall
confesse no Ouster. 54

The 8. question of the Do. how the statute that
was made in the 45. yeare of Edw. 3. concer-
ning the title of wood may stand with con-
science. 55

FINIS.

Ex. lib.

e
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